MASTER'S THESIS IN INTERNATIONAL LAW AND HUMAN RIGHTS

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EXTRATERRITORIAL RESPONSIBILITY TO PROTECT CIVILIANS IN A SITUATION OF ARMED CONFLICT – CONCEPTS, JURISDICTION AND APPLICABILITY

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Abstract for Master's Thesis

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The international community's inability to protect the rights of civilians during the horrendous atrocities of the 20th century acknowledged the vulnerable position of civilians in the midst of an armed conflict. In the conduct towards respect of the rights of civilians, the two international norms of protection, namely Responsibility to Protect (R2P) and Protection of Civilians (POC) have emerged. These two concepts demonstrate the view on respect of human rights through both international human rights law and international humanitarian law. This research concerns the extraterritorial responsibility to protect civilians in a situation of armed conflict, where both R2P and POC are essential norms and likewise, both norms have contributed to the increased responsibility for human rights.

Since the 20th century, the view on sovereignty has changed, which has facilitated the shift from sovereignty as control to sovereignty as responsibility. International intervention is stated to be controversial, nevertheless both R2P and POC allow for international intervention in order to protect civilians. The extraterritorial responsibility to protect civilians is founded on the humanitarian principle to protect the most vulnerable and on jurisdiction as responsibility, as states bear an obligation to ensure protection of human rights within their jurisdiction. Contrary to the principle of non-intervention, extraterritorial R2P and POC rely upon the universal commitment to protect and on the view that sovereignty equals to responsibility

The legal foundation for extraterritorial responsibility to protect civilians in a situation of armed conflict, lies first and foremost in the hands of the national state and where the national state fails to protect, the international community is to intervene and assist in providing protection for civilians. Through international human rights treaties, states have a constant obligation to protect. This obligation to protect includes extraterritorial protection, as states have an obligation to respect and secure human rights at all times, which has been interpreted to comply also to situations of extraterritoriality. Consequently, when a state is in a position of effective control over an area, that state has human rights obligations towards the civilian population in that specific area, be it nationals or non-nationals.

Key words: Extraterritorial Protection, Responsibility to Protect, Protection of Civilian, Civilian, Extraterritorial Responsibility to Protect

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List of Abbreviations

ACHR	American Convention on Human Rights
ACHPR	African (Banjul) Charter on Human and People's Rights
API	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts
APII	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CIL	Customary International Law
CRC	Convention on the Rights of the Child
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
GCI	Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field
GCII	Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea
GCIII	Convention relative to the Treatment of Prisoners of War
GCIV	Convention relative to the Protection of Civilian Persons in Time of War
Genocide Convention	Convention on the Prevention and Punishment of the Crime of Genocide
HCII	Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land
HCIV	Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land
IAC	International Armed Conflict
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICC Statute	Rome Statute of the International Criminal Court
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICISS	International Commission of Intervention and State Sovereignty
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross and the Red Crescent
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia

IDP	Internally Displaced Person
IHL	International Humanitarian Law
IHRL	International Human Rights Law
ILC	United Nations International Law Commission
NIAC	Non-International Armed Conflict
PCIJ	Permanent Court of International Justice
PIL	Public International Law
POC	Protection of Civilians
R2P	Responsibility to Protect
St Petersburg Declaration	Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations General Assembly
UNHRCm	United Nations Human Rights Committee
UNSC	United Nations Security Council
UNSG	United Nations Secretary-General
WSOD	World Summit Outcome Document
WWII	World War II (1939-1945)

1. Introduction

1.1. Background

This chapter presents and discusses the research questions of this thesis. Firstly, it discusses the background to the research, followed by a presentation of the research questions. Thirdly, this chapter discusses the methods and materials used in this thesis, concluding with a presentation of the composition of the thesis.

Atrocities of the 20th century contributed to acknowledge the vulnerable position of civilians in the midst of an armed conflict, violations characterised by systematic targeting of civilians causing suffering for civilian population, as seen in the Second World War (WWII), the Rwandan Genocide, Srebrenica, Liberia, Somalia, Iraq, Afghanistan, Kosovo and Darfur to name a few.[1] The list of examples could be made quite so extensive, as maltreatment of the rights of civilians is an ongoing international problem of human rights. Genocide, war crimes, ethnic cleansing and crimes against humanity are only some of the atrocities marked by the "profound failure of individual States to live up to their most basic and compelling responsibilities",[2] namely, to care for their own and protect the individual within the state.

The United Nations (UN) was established after WWII in 1945, with the main purpose and aim to maintain and protect world peace and security, even so, Article 2(4) of the UN Charter specifically prohibits the use of force in order to initiate an armed conflict.[3] A wish to avoid walking down the same path of violence and war again can also be found in the Preamble of the Universal Declaration of Human Rights (UDHR): "(…) disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind".[4] As well as that, the atrocities of the 20th century made the international community aware of the problematics in times of war and led to action aimed at ameliorating the situation of civilians.[5]

[1] *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, ICRC, 31IC/11/5.1.2, 2011, p. 5.
[2] Report of the Secretary-General, *Implementing the Responsibility to Protect*, 12 January 2009, UN doc. A/63/677, paragraph 5.
[3] Article 2(4), Charter of the United Nations, 1945.
[4] Preamble, Universal Declaration of Human Rights, 1948.
[5] Atrocities and effect on civilians, as seen in the Preamble, Rome Statute of the International Criminal Court, 1998: "*Mindful* that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity, *Recognizing* that such grave crimes threaten the peace, security and well-being of the world" (emphasis added by the author).

However, international law and the international community, although it could be said to have the means to protect, failed to provide the most "basic human security for those subjected to the most horrendous of atrocities".[6] Skogly argues that, "state responsibility is not commonly invoked in situations where the actions of one state breach or threaten the human rights of individuals in another state".[7] Protecting the rights of civilians during armed conflict is a core principle under international humanitarian law (IHL), and hence, also under public international law (PIL) which makes it a vital topic of PIL. According to Milanovic "[h]uman rights are, after all, supposed to be universal" and consequently, it should be irrelevant whether a violation has taken place inside the territory or outside the territory of a state.[8] This, however, is rarely the case, as violations committed outside the territory of a state most often become matters of treaty interpretation.[9] This thesis concentrates on the responsibility of a state to extraterritorially protect its unarmed population in a situation of armed conflict.

The last century marked a new era for humanity in several ways, development and improved conditions for life marked all fields of society. Remarkable progress was made in most fields of life, by way of example, improved nutrition, food processing and food storage; medicines, vaccinations, health care and hygiene; construction methods and transport; radio, television and the internet; education and literacy rates; weapons and war machinery; respect of human rights and peace.[10] Here it is to be noted, there is still much to be done, but most fields of life have developed and improved for the better during the last 20 years.[11] Keeping the aforementioned in mind, what were the most shocking events of the last century? The persecution of Jews and the Holocaust during the WWII, the inconsiderate exploitation of African colonies, the Rwandan genocide and rape as a method of genocide,[12] the systematic mass killings of Srebrenica, the killing fields of Cambodia and so forth. These and multiple other horrendous mass atrocity crimes and armed conflicts across the globe that caused the death of millions of innocent people during the last century.[13] The tragic events of the 20th century made the UN

[6] Stockburger, "The Responsibility to Protect Doctrine: Customary International Law, an Emerging Legal Norm or Just Wishful Thinking?", *Intercultural Human Rights Law Review* 2010, Vol. 5, p. 365.
[7] Skogly, "Extraterritoriality: universal human rights without universal obligations?" in Joseph and McBeth (eds.), 2011, p. 86.
[8] Milanovic, 2011, p. 2.
[9] Ibid., p. 2.
[10] Global Development Statistics, available at www.gapminder.org
[11] Ibid.
[12] United Nations Office of the High Commissioner for Human Rights, "Rape: Weapon of War", available at: https://www.ohchr.org/en/newsevents/pages/rapeweaponwar.aspx
[13] Glover, 1996, p. 2.

together with world leaders question "whether the United Nations and other international institutions should be exclusively focused on the security of States without regard to the safety of the people within them" and,[14] is it possible that sovereignty could "be misused as a shield behind which mass violence could be inflicted on populations with impunity?".[15] One of the major difficulties in contemporary armed conflicts is the need to protect civilians and civilian objects, like homes, schools and hospitals.[16]

In the 21st century, the world is moving towards international peace.[17] Historically, it is the most peaceful time in history thus far, although that is only part of the truth as the nature of armed conflicts has changed and non-international armed conflict (NIAC) or intra-state conflicts and civil wars are now the dominating form of conflict.[18] The shift from international armed conflict (IAC) or inter-state conflicts to intra-state conflicts has come at the cost of civilians, as civilians undoubtedly are targeted in intra-state conflicts.[19] Although the 21st century can be said to be peaceful, armed conflicts do occur and cause horrible outcomes regarding civilian population and civilian property.[20] Even so, the aftermaths of an armed conflict are serious. It takes time to rebuild infrastructure, to move on and pass trauma, eventually reaching a functioning and inclusive society. That is to say, to move from war and chaos to peace and respect of human rights. Darfur, Libya and Myanmar are to be mentioned as these are only some of the most recent conflicts where extraterritorial protection of civilians (POC) has been neglected.[21] Stockburger stated in his article that discusses responsibility to protect (R2P) that "[h]umankind is well versed in the art of atrocity. The law, unfortunately, as an institution created to govern the brutality of human action is also well versed in the art of inaction".[22] The remarked change in the nature of conflicts since the latter half of the 20th century from inter-state to intra-state has led to a distinct change in who bears the R2P, the

[14] Report of the Secretary-General, *Implementing the Responsibility to Protect*, 12 January 2009, UN doc. A/63/677, paragraph 5.
[15] Ibid., paragraph 5.
[16] Murphy, "Peacekeeping in Lebanon and Civilian Protection", *Journal of Conflict and Security Law* 2012, Vol. 17, No. 3, pp. 373-402.
[17] Global Development Statistics, available at www.gapminder.org
[18] Orchard, "The Perils of Humanitarianism: Refugee and IDP Protection in Situations of Regime-Induced Displacement", *Refugee Survey Quarterly* 2010, Vol. 29, No. 1, p. 38.
[19] Ibid., pp. 38-41.
[20] See e.g. the situation in Myanmar, *Report of the detailed findings of the Independent International Fact-finding mission on Myanmar*, A/HRC/39/64, 12 September 2018.
[21] Ibid.
[22] Stockburger, "The Responsibility to Protect Doctrine: Customary International Law, an Emerging Legal Norm or Just Wishful Thinking?", *Intercultural Human Rights Law Review* 2010, Vol. 5, p. 365.

responsibility has to some degree shifted from the state to humanitarian organisations and the like.[23] Supposedly that is a logical outcome when a state targets its own people, then the same government also lacks the interest or will, to protect its own people and so the responsibility is placed on the international community instead.[24] At an international level this leads to the fact that "many of these victims receive inadequate (or no) protection", in this example 'victims' comprehends the civilian population.[25]

POC can be maintained and developed through different methods and one can say that, though an aspiration to protect civilian population has been common among state practice through customary international law (CIL) and IHL, still this can tend to be forgotten when a state itself is involved in an actual situation of armed conflict.[26] CIL is of utmost importance in contemporary armed conflicts as it fills the gaps that are not filled by treaty law. Coherence is lacking when discussing state practice and reality, the actions of a state then are what indicates whether the state in question actually does respect the principle of civilian protection or not.[27] There is, however, a gap between formulated and established state aspirations for conduct of actions during armed conflict and actual conduct of actions during armed conflict, this gap being of a surprisingly great extent in contemporary armed conflicts,[28] especially regarding that a majority of states are parties to the most relevant conventions and treaties regulating IHL. POC in armed conflict is thus accepted as established state practice, a norm of CIL and it is regulated by several international treaties.[29]

[23] Orchard, "The Perils of Humanitarianism: Refugee and IDP Protection in Situations of Regime-Induced Displacement", *Refugee Survey Quarterly* 2010, Vol. 29, No. 1, pp. 38-41.
[24] Ibid., p. 41.
[25] Ibid., p. 41.
[26] Nishimura, "The Principle of Civilian Protection and Contemporary Warfare" in Hensel (ed.), 2005, p. 106.
[27] Ibid., pp. 105–106.
[28] Ibid., p. 106.
[29] Valentino, Huth and Croco, "Covenants without the Sword: International Law and the Protection of Civilians in Times of War", *World Politics*, 2006, Vol. 58, No. 3, p. 339 and p. 341.

For a practice to become CIL, an "extensive and virtually uniform" and "settled practice",[30] that has acquired "evidence of a general practice accepted as law",[31] should be distinguished. Furthermore, the practice should be supported by an international opinion that the practice is legally binding, *opinio juris*, the belief that a norm is accepted as law.[32] Once practice meets these requirements, it can be said to be considered as a rule of CIL that is binding all states.[33] However, the jurisprudence of the International Court of Justice (ICJ)

> "shows that contrary practice that appears at first sight to undermine the uniformity of the practice concerned does not prevent the formation of a rule of customary international law as long as this contrary practice is condemned by other states or denied by the government itself."[34]

All parties to an armed conflict are responsible for protecting civilians, by seeking to minimize the harm caused to civilians and civilian objects.[35] Regardless of this, civilian protection is neither fully implemented in practice nor is it self-evident in a situation of armed conflict.[36] The principle of POC during armed conflict then composes part of CIL, and has been seen as part of CIL since the beginning of the 20th century.[37] The obligation to spare the civilian population from unnecessary suffering and damage to civilian objects was primarily stated in Article 23 of the Convention respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (HCIV)[38] and in Article 25 of the Convention with Respect to the Laws and Customs of War on Land and its annex:

[30] *North Sea Continental Shelf* cases, ICJ Reports 1969, p. 3, pp. 43-44: "Although the passage of only a short period of time is not necessarily, or of itself, a bar to the formation of a new rule of customary international law on the basis of what was originally a purely conventional rule, an indispensable requirement would be that within the period in question, short though it might be, State practice, including that of States whose interests are specially affected, should have been both extensive and virtually uniform in the sense of the provision invoked;- and should moreover have occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved."
[31] Article 38, Statute of the International Court of Justice, 1945.
[32] Ryngaert, 2015, p. 181.
[33] Stockburger, "The Responsibility to Protect Doctrine: Customary International Law, an Emerging Legal Norm or Just Wishful Thinking?", *Intercultural Human Rights Law Review* 2010, Vol. 5, p. 389.
[34] Henckaerts, "Assessing the Laws and Customs of War: The Publication of Customary International Humanitarian Law", *Human Rights Brief* 2006, Vol. 13, No. 2, p. 9. See also *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, ICJ Reports 1986, p. 14, paragraph 186: "The Court does not consider that, for a rule to be established as customary, the corresponding practice must be in absolutely rigorous conformity with the rule. In order to deduce the existence of customary rules, the Court deems it sufficient that the conduct of States should, in general, be consistent with such rules".
[35] Articles 48 and 57, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 1977.
[36] Valentino, Huth and Croco, "Covenants without the Sword: International Law and the Protection of Civilians in Times of War", *World Politics*, 2006, Vol. 58, No. 3, p. 341.
[37] Nishimura, "The Principle of Civilian Protection and Contemporary Warfare" in Hensel (ed.), 2005, p. 107.
[38] Article 23, Convention respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, 1907.

Regulations concerning the Laws and Customs of War on Land (HCII)[39] already in the early beginning of the 20th century. Article 22 as well as Article 24 of the 1923 Rules concerning the Control of Wireless Telegraphy in Time of War and Air Warfare also at an early stage stated the prohibition of indiscriminate attacks and attacks directed against civilians are prohibited.[40]

States do have both a right and a duty to protect; to protect its nationals, but also any other person present within the borders of a state.[41] States also have a responsibility to protect its own nationals when a national is under the jurisdiction of a foreign state, and hence not situated within the territory of national protection. Milanovic has stated that application of human rights treaties extraterritorially "must have a *real-world impact*. Otherwise […] it would be worse than useless" and it would result in violations going through a degeneration and making extraterritorial state-led acts against individuals lawful by twisted means.[42] This principle of extra-territorial protection of nationals becomes interesting in a situation of armed conflict, when regarding protection of civilians. Accordingly, states bear the responsibility to protect their nationals, especially vulnerable and disadvantaged groups of their population, also extraterritorially. There are different ways for defining who is a vulnerable person or what consists a vulnerable group, however, what is generally acknowledged in the discussion of vulnerability is the recognition that there is a need to protect the rights of vulnerable people.[43] The Icelandic Human Rights Centre has listed 13 groups that can be seen as especially vulnerable and disadvantaged and therefore needing special protection: 1) women and girls; 2) children; 3) refugees; 4) internally displaced persons; 5) stateless persons; 6) national minorities; 7) indigenous peoples; 8) migrant workers; 9) disabled persons; 10) elderly persons; 11) HIV positive persons and AIDS victims; 12) Roma/ Gypsies/ Sinti; and 13) lesbian, gay and transgender people.[44] There are obviously further definitions and categorisations as this list is not all-embracing, but the Icelandic Human Rights Centre's list can be used as a general

[39] Article 25, Convention with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, 1899.
[40] Articles 22 and 24, Rules concerning the Control of Wireless Telegraphy in Time of War and Air Warfare, 1923.
[41] Report of the International Commission of Intervention and State Sovereignty, *The Responsibility to Protect*, 2001.
[42] Milanovic, 2011, p. 113.
[43] Chapman and Carbonetti, "Human Rights Protection for Vulnerable and Disadvantaged Groups: The Contributions of the UN Committee on Economic, Social and Cultural Rights", *Human Rights Quarterly* 2011, Vol. 33, No. 3, p. 682.
[44] Icelandic Human Rights Centre, "The Human Rights Protection of Vulnerable Groups", 2009, available at http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/the-human-rights-protection-of-vulnerable-groups

guiding principle for vulnerable groups. Consequently, just like any other civilian during an armed conflict, these distinguished vulnerable and disadvantaged groups need protection. As the UDHR pledges states to promote "universal respect for and observance of human rights and fundamental freedoms",[45] then, naturally, R2P and POC ought to be respected at all times and without distinction to territory.[46]

1.2. Research Questions

The research questions this thesis aims to answer are presented in this section. The field of international law that covers extraterritorial protection is wide, and all aspects of extraterritorial protection is therefore impossible to cover in this thesis. However, the following aspects of extraterritorial protection will be covered by this research. Firstly, when an individual is situated in the territory, admittedly within the jurisdiction of another state and an armed conflict occurs, whose responsibility is it to protect this civilian? What is the legal foundation of R2P, and how about POC, what does this international norm of protection entail? Secondly, what duties do states have to protect their national(s) in a situation of armed conflict when the civilian is situated under the jurisdiction of a foreign state? Then, on the one hand, what rights do states possess to protect their national(s) in a situation of armed conflict when the civilian is situated under the jurisdiction of a foreign state? Why do states have this right to protect their nationals extraterritorially in a situation of armed conflict? How can states practice this right to protect their nationals and are there situations when states can be forced to protect their nationals abroad during wartime? And what jurisdictional foundation is there for states' responsibility to extraterritorially protect civilians in a situation of armed conflict? and what is the legal ground for this extraterritorial responsibility? Finally, on the other hand, is there any situation when states are legitimately prohibited from protecting their nationals abroad in a situation of armed conflict?

Humanitarian agencies and non-governmental organisations are not included in the research of this thesis, but the research is to concentrate on activity to protect civilians that is bound to the state. More often than not, the activity to protect civilians by humanitarian agencies is limited,

[45] Preamble, Universal Declaration of Human Rights, 1948.
[46] Milanovic, 2011, p. 56.

as humanitarian agencies often lack political authority, military force and legal mandate to protect civilians in an effective manner.[47]

1.3. Method and Materials

This thesis is to follow the legal doctrinal method and to analyse the current existing law provided through human rights treaties, relevant case law and the practice around the extant legal instruments regarding extraterritorial protection of civilians, which can assist in the advancement of the implementation of these basic rights of civilians. In order to conduct the research of this thesis, PIL sources defined in Article 38(1) of the Statute of the ICJ have been used, that is: international conventions, international custom, general principles of law and doctrine.[48] The subject of the thesis is presented through literature concerning extraterritorial R2P and POC, the research questions are discussed through these principles of CIL, as well as decisions from both international and domestic courts to demonstrate the interpretation of norms. The legal discussion is reflected through a variety of documents from the UN, as well as monographs and articles written by experts of PIL. Sources are discussed, examined and applied with special focus on extraterritorial responsibility to protect civilians. Conclusions are made through a critical review of existing legal grounds, and previous research on extraterritorial protection of civilians will be the background for this thesis.

This thesis presents the essential instruments from PIL for this research, that are: the four Geneva Conventions from 12 August 1949 [Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (GCI), Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (GCII), Convention relative to the Treatment of Prisoners of War (GCIII) and Convention relative to the Protection of Civilian Persons in Time of War (GCIV)] together with their 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (API) and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of

[47] Orchard, "The Perils of Humanitarianism: Refugee and IDP Protection in Situations of Regime-Induced Displacement", *Refugee Survey Quarterly* 2010, Vol. 29, No. 1, p. 75.
[48] Article 38(1), Statute of the International Court of Justice, 1945

Victims of Non-International Armed Conflicts (APII).[49] These conventions constituting the very core of IHL and forming the basis for this thesis together with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), the Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Rights of the Child (CRC) and the Charter of the United Nations. R2P is to a large extent discussed through *The Responsibility to Protect* report by the International Commission of Intervention and State Sovereignty (ICISS).[50] This study will be significant as it will form an overview of available literature, legislation and case law and provide an in-depth analysis in the area of extraterritorial R2P and POC. However, it is evidently impossible to provide a completely clear synopsis of the implementation of extraterritorial protection of civilians across the international community, as to some extent it is impossible to gain information regarding state practice and customary principles.

1.4. Composition and Chapters

By way of introduction, this thesis commences by presenting the background to the research questions of the thesis and then moves on to present and analyse R2P and POC in Chapter 2. Followed by Chapter 3 regarding the principles of extraterritorial protection of civilians, that is, jurisdiction. Chapter 3 will first discuss the concept of territoriality and the concept of extraterritoriality, then it will advance to discuss extraterritorial jurisdiction. Chapter 3.2.1. will start with a discussion of jurisdiction in a general manner and it will then move on to more specific aspects of jurisdiction in an extraterritorial setting, followed by a discussion on jurisdiction of R2P and POC. Chapter 4 focuses on extraterritorial protection of civilians, by looking at extraterritorial application of human rights treaties, state responsibility and effective control. Finally, in Chapter 5, this thesis will end by a concluding discussion regarding extraterritorial responsibility to protect civilians within the findings of the research.

[49] These major IHL treaties protect wounded and sick combatants (GCI); shipwrecked combatants (GCII); prisoners of war (GCIII); civilians and those in occupied territories (GCIV); broadened protection of civilians and limits the means and methods of war and (API); civilians and civilian objects in non-international armed conflicts (APII).
[50] Report of the International Commission of Intervention and State Sovereignty, *The Responsibility to Protect*, 2001.

It is to be noted that there are variations in terminology, when speaking of extraterritoriality, thus both extra-territoriality and extraterritoriality will be used in this thesis. Likewise, the terms protection of civilian and protection of civilians are used in a synonymous manner.

2. International Norms of Protection

2.1. Responsibility to Protect

2.1.1. Background

This chapter will discuss the two norms of international law, that is R2P and POC. The chapter firstly discusses and presents R2P, its legal background and framework, this is followed by a discussion concerning the three pillars of R2P. POC is presented through a similar manner, firstly, demonstrating the background and legal framework of the norm, then proceeding to the different forms of POC. The chapter is concluded by analysing the legal foundation of civilians and civilian objects according to IHL, in order to demonstrate the law that protection of civilians is based on and what it consists of. For the research of this thesis, namely, extraterritorial responsibility to protect civilians in a situation of armed conflict, a discussion on R2P and POC is vital, as it demonstrates the international norms that constitutes part of the basis of extraterritorial responsibility to protect civilians.

States have the primary obligation to care for their nationals and other persons present in their jurisdiction through both positive and negative state obligations. The state is to ensure that rights of individuals, as recognised by law, "are respected, protected, fulfilled and when necessary, enforced" within the jurisdiction.[51] Positive state obligations denote a state's obligation to actively secure the enjoyment of fundamental human rights. Obligations to ensure human rights of persons within the jurisdiction, that is, positive state obligations, can according to Milanovic be translated into the practice of preventing "violations committed by third states, private individuals or non-state groups".[52] This comprehends activity to facilitate the enjoyment of a right. Activity to promote the enjoyment of human rights can be both judicial and practical;[53] it can be actions to provide regulatory framework and to take preventive operational

[51] "Positive and negative obligations of the State", The Doha Declaration: Promoting a Culture of Lawfulness, 2019, available at: https://www.unodc.org/e4j/en/tip-and-som/module-2/key-issues/positive-and-negative-obligations-of-the-state.html
[52] Milanovic, 2011, p. 46.
[53] "Positive and negative obligations of the State", The Doha Declaration: Promoting a Culture of Lawfulness, 2019, available at: https://www.unodc.org/e4j/en/tip-and-som/module-2/key-issues/positive-and-negative-obligations-of-the-state.html

measures.[54] In order for a state to fulfil its positive state obligations, "a state needs actual or effective control over a territory or a population".[55]

Negative state obligations comprehends a duty to "refrain from action that would hinder human rights".[56] Compared to positive state obligations, in order to violate negative state obligations, "a state needs little by way of means".[57] When a state fails to fulfil its state obligations, then legal procedures might be lodged against that state and the international community might be made the one to bear the responsibility of fulfilling the state obligations neglected by the national state.

Throughout history, civilians have been significantly affected by armed conflicts; both regarding damage to civilian objects and the number of civilian lives lost in armed conflicts.[58] On the one hand, since long there has been a humanitarian tendency and an aspiration to spare civilian population from the atrocities of war,[59] namely formally stated for the first time in the 1868 Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight (St Petersburg Declaration).[60] In the St Petersburg Declaration, it is stated "the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy",[61] hence the main objective of a party to any armed conflict is not to cause the greatest possible damage to the counterparts, e.g. any kind of severe or widespread damage that will most probably affect the civilian population in several ways; but to concentrate on military objectives and the like of the enemy. On the other hand, in CIL, there has long been a humanitarian point of view regarding civilians in armed conflicts, military leaders expressing humanitarian wishes in order to spare civilian

[54] *Guide on Article 2 of the Convention – Right to Life*, Council of Europe/European Court of Human Rights, 2019, p. 8/49.
[55] Milanovic, 2011, p. 18.
[56] "Positive and negative obligations of the State", The Doha Declaration: Promoting a Culture of Lawfulness, 2019, available at: https://www.unodc.org/e4j/en/tip-and-som/module-2/key-issues/positive-and-negative-obligations-of-the-state.html
[57] Milanovic, 2011, p. 18.
[58] Valentino, Huth and Croco, "Covenants without the Sword: International Law and the Protection of Civilians in Times of War", *World Politics*, 2006, Vol. 58, No. 3, p. 339.
[59] Ibid., p. 339.
[60] Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight, 1868.
[61] Ibid.

populations from unnecessary damage and sufferings,[62] this humanitarian wish is today formally expressed by the doctrine of R2P.[63] Whereas R2P is mainly an obligation for states, POC is binding also for actors that are non-state actors.[64]

The principle of R2P emerged only recently, in 2001, and the principle originates from situations "of when, if ever, it is appropriate for states" to intervene and take action, especially military action, in another state with the purpose of protecting vulnerable people at risk in that other state.[65] After the atrocities during the last decade of the 20th century, it became clear for the international community that non-interference in the face of atrocity crimes was no longer acceptable.[66] Gross human rights violations, sovereign integrity and the principle of non-interference posed the international community before a global dilemma regarding intervention for human protection purposes.[67] What makes R2P tricky still, is the fact that international help and intervention is nothing self-evident nor is it anything that can be guaranteed to populations at risk, because who would bear the main responsibility to co-ordinate international intervention and on what grounds would the need for intervention be based? The basis of the doctrine is to protect populations from genocide, war crimes, ethnic cleansing, crimes against humanity and from their incitement.[68]

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[62] Henckaerts and Doswald-Beck, 2005, pp. 3-8, Rule 1: "The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians".

[63] See Report of the International Commission of Intervention and State Sovereignty, *The Responsibility to Protect*, 2001 and Report of the Secretary-General*, Implementing the Responsibility to Protect*, 12 January 2009, UN doc. A/63/677.

[64] Popovski, "The Concepts of Responsibility to Protect and Protection of Civilians: 'Sisters, but not Twins'", *Security Challenges* 2011, Vol. 7, No. 4, p. 5.

[65] Report of the International Commission of Intervention and State Sovereignty, *The Responsibility to Protect*, 2001, p. vii.

[66] Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict, S/1999/957, 8 September 1999.

[67] Durham and Wynn-Pope, "The relationship between international humanitarian law and responsibility to protect: From Solferino to Srebrenica" in Francis, Popovski and Sampford (eds.), 2012, p. 178.

[68] World Summit Outcome Document, 24 October 2005, UN doc. A/RES/60/1, paragraphs 138 and 139. **Paragraph 138**:"Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability." **Paragraph 139**:"The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress

International intervention can be controversial in many aspects, even the existence of international intervention or the lack of intervention can at times cause controversy in the international community.[69] R2P or the duty to protect is a tool for assuring that states "actually *do* exercise jurisdiction when it would be in the interest of the international community".[70] Notably, the doctrine implies above all a "responsibility to react" to situations in serious need of humanitarian help and human protection,[71] especially when a state itself is unwilling or unable to restore the situation at hand.[72] In addition to the responsibility to react, the doctrine implies a "responsibility to prevent",[73] and a "responsibility to rebuild".[74] It can be justified to say states at times do have a certain responsibility and not only a responsibility, but a duty to exercise jurisdiction, either as a responsibility or duty to protect other states or even fundamental values of the whole international community.[75] The doctrine of R2P consequently affirms the suggestion "that the international community has a duty to intervene, to protect".[76] To some extent, extraterritorial human rights obligations, like R2P, are seen as international obligations.[77] The former United Nations Secretary-General (UNSG) Kofi Annan in his report *'We the Peoples' – the Role of the United Nations in the 21st Century* posed the following question to the United Nations General Assembly (UNGA):

> if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights that offend every precept of our common humanity?.[78]

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the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out."

[69] Report of the International Commission of Intervention and State Sovereignty, *The Responsibility to Protect*, 2001, p. vii.

[70] Ryngaert, 2015, p. 161 (emphasis original).

[71] Report of the International Commission of Intervention and State Sovereignty, *The Responsibility to Protect*, 2001, paragraph 4.1.

[72] Ibid., paragraph 4.1.

[73] Ibid., paragraphs 3.1-3.5.

[74] Ibid., paragraphs 5.1-5.2.

[75] Ryngaert, 2015, p. 161.

[76] Orchard, "The Perils of Humanitarianism: Refugee and IDP Protection in Situations of Regime-Induced Displacement", *Refugee Survey Quarterly* 2010, Vol. 29, No. 1, p. 60.

[77] Skogly, "Extraterritoriality: universal human rights without universal obligations?" in Joseph and McBeth (eds.), 2011, pp. 73-74.

[78] Report of the UN Secretary-General, '*We the Peoples'- the Role of the United Nations in the 21st Century* , 30 March 2000, Press Release No. UNIS/SG/2529, p. 48.

R2P is an answer to this challenge.[79] The doctrine of R2P is a response to the inaction and paralysation that marked the international community, especially during the second half of the 20th century; an inaction that has facilitated acts of genocide, ethnic cleansing and crimes against humanity.[80] As armed conflicts have made the shift from inter-state to intra-state, so also humanitarian intervention has developed. Focus has shifted from a right to intervene opposed to territorial integrity, to rights of individuals and the responsibility of states and the international community to protect these rights of individuals.[81] This has led to emphasis being put on "human rights, primary state responsibility and international back-up" responsibility.[82]

When discussing R2P and international intervention, the notion of right to intervene is put upside-down, as the international responsibility is rather to be put on global responsibility to protect people at risk than on the right to intervene, the perspective being angled on those in need of help and not on the intervening party.[83] Simultaneously, the doctrine of R2P is an emerging norm of international law, a norm of "fundamental ethical importance" for the whole international community and international rights system.[84] The concept of protection could be used to require a state (or states) to exercise jurisdiction when gross human rights violations like genocide; war crimes; slavery; torture and cruel, inhuman and degrading treatment or punishment; enforced disappearance; deportation or forcible transfer of population; and systematic discrimination, especially when based on race or gender take place in the territory of a state.[85] In a jurisdictional context, R2P could even be used to require states to "assume their responsibility to bring to justice the perpetrators of such violations".[86] To some extent R2P and universal jurisdiction supplement each other and work towards the same goals.[87] R2P can be used as a motivation for requiring states to "exercise jurisdiction over internationally harmful activities originating" from within the territory.[88]

[79] Stockburger, "The Responsibility to Protect Doctrine: Customary International Law, an Emerging Legal Norm or Just Wishful Thinking?", *Intercultural Human Rights Law Review* 2010, Vol. 5, p. 365.
[80] Ibid., p. 365.
[81] Francis and Sampford "Introduction" in Francis, Popovski and Sampford (eds.), 2012, p. 4.
[82] Ibid., p. 4.
[83] Report of the International Commission of Intervention and State Sovereignty, *The Responsibility to Protect*, 2001, Chapter 2.
[84] Evans, "From Humanitarian Intervention to the Responsibility to Protect", *Wisconsin International Law Journal* 2006, Vol. 24, No. 3, p. 704.
[85] Ryngaert, 2015, p. 162.
[86] Ibid., p. 162.
[87] See Chapter 3.2.7.in this thesis regarding Universal Jurisdiction.
[88] Ryngaert, 2015, p. 162.

Sovereignty and intervention are two concepts that have been much associated with R2P, which is demonstrated in the following two basic principles, compiled by the ICISS, where the concept of R2P was formulated for the first time:

A) State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies within the state itself.

B) Where a population is suffering serious harm, as a result of internal war, insurgency or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect. [89]

The concept of R2P was further affirmed in the 2005 World Summit Outcome Document (WSOD) and in 2006 by the United Nations Security Council (UNSC) in Resolution 1674.[90] Both sovereignty and intervention, especially military intervention, can be said to be somewhat controversial in this context, as there is a plethora of differing opinions whether intervention is justified, to what amount intervention is justified, whereas sovereignty is disturbed by international intervention, according to some, and protection of human rights comes prior to sovereignty according to others. Also, who is to decide on international intervention, duration of intervention and manner of intervention are opinion-dividing aspects of R2P.

In the *Implementing the Responsibility to Protect* report from 2009, by the UNSG Ban Ki-moon, R2P includes three "pillars" or responsibilities,[91] Breakey refers to these pillars as elements.[92] Accordingly, there are three pillars, responsibilities or elements in the core concept of R2P, namely:

1) the protection responsibilities of the state or "sovereignty as responsibility",[93]

2) international assistance and capacity-building or international back-up responsibility to protect and

[89] Report of the International Commission of Intervention and State Sovereignty, *The Responsibility to Protect*, 2001, Basic Principles A) and B), p. xi.
[90] World Summit Outcome Document, 24 October 2005, UN doc. A/RES/60/1 and UNSC Resolution 1674, 28 April 2006, UN doc. S/RES/1674: "Reaffirming that parties to armed conflict bear the primary responsibility to take all feasible steps to ensure the protection of affected civilians"
[91] Report of the Secretary-General, *Implementing the Responsibility to Protect*, 12 January 2009, UN doc. A/63/677.
[92] Breakey, "The responsibility to protect: Game change and regime change", in Francis, Popovski and Sampford (eds.), 2012, p. 11.
[93] Deng (ed.), 1996.

3) timely and decisive interventions or manner of interventions.[94]

In sub-chapters 2.2.1. to 2.2.3., these three main elements will be discussed. Overall, in short, the doctrine of R2P operates on the assumption that, when and where, a state is failing or fails, by unwillingness or inability, to protect its population from atrocities, the remaining responsibility falls on the international community to protect.[95] When and if, the territorial state would fail to assume its R2P, then other states could/should step in, in order to protect the interests of the civilian population and the international community.[96]

2.1.2. Legal Framework of Responsibility to Protect

The doctrine of R2P operates within the frames of international law, IHL and the foundation for human protection. Pre-existing bodies of international law such as the 1998 Rome Statute of the International Criminal Court (ICC Statute), the 1948 Genocide Convention and the 1945 UN Charter, award R2P its authority.[97] The UN and especially the UNSC bears an effective role in this regard, as according to Chapter VII of the UN Charter the UNSC is conferred with the primary responsibility to maintain international peace and security.[98] Articles 39, 41 and 42 of the UN Charter further discuss this responsibility of the UNSC to maintain international peace and security, by ways of describing what action, especially non-military action and as a last resort military action, the UNSC can take when it has identified the existence of a threat to international peace.[99] These aforementioned articles together with Article 51 of the UN Charter regarding self-defence, are the only articles in the UN Charter that "expressly trump the domestic jurisdiction restriction".[100] The mandate to maintain international peace and security given to the UNSC in the articles of Chapter VII of the UN Charter, indeed authorises the UNSC to act in order to protect civilians.[101] Additionally, Article VIII of the Genocide Convention

[94] Ibid., p. 11. For more detailed information regarding the three elements of R2P, see Report of the Secretary-General, *Implementing the Responsibility to Protect*, 12 January 2009, UN doc. A/63/677.
[95] Report of the Secretary-General, *Implementing the Responsibility to Protect*, 12 January 2009, UN doc. A/63/677.
[96] Ryngaert, 2015, p. 162.
[97] Durham and Wynn-Pope, "The relationship between international humanitarian law and responsibility to protect: From Solferino to Srebrenica" in Francis, Popovski and Sampford (eds.), 2012, p. 176.
[98] Article 24, Charter of the United Nations, 1945.
[99] Articles 39, 41 and 42, Charter of the United Nations, 1945.
[100] Report of the International Commission of Intervention and State Sovereignty, *The Responsibility to Protect*, 2001, paragraph 6.4, Articles 39, 41, 42 and 51, Charter of the United Nations, 1945.
[101] Chapter VII, Charter of the United Nations, 1945, Breakey and Francis, "Points of Convergence and Divergence: Normative, Institutional and Operational Relationships between R2P and PoC", *Security Challenges* 2011, Vol. 7, No. 4, p. 46.

provides the competent UN organs with the authority to prevent genocide.[102] Article VII of the Genocide Convention then implies the UNSC to be the primary organ to take appropriate action and prevent genocide.[103]

The UNSC is not the sole organ to undertake the maintenance of international peace and security, it does have the primary responsibility to maintain peace but the UNGA is also liable with regard to questions of peace and security as well as is the UNSG.[104] Article 10 of the UN Charter provides the UNGA with a general responsibility scope to any question within the Charter of the UN, whereas Article 11 gives the UNGA a fallback responsibility to make recommendations, not binding decisions but recommendations, with specific regard to questions of maintenance of international peace and security.[105] The UNSG can bring questions to the UNSC, when the questions may threaten the maintenance of international peace and security.[106]

Additionally, and as mentioned previously, the primary R2P lies firstly in the hands of the sovereign state, secondly with domestic authorities that exercise partnership with external operators and only at the third place comes international organisations.[107] Where a state fails to protect the people within its jurisdiction from atrocities, there is a responsibility deficit and the international community with the UNSC in a key position is to step in.[108] For as long as states make it a priority to protect peace and its own population from atrocities by jurisdiction and active measures of R2P, the probability of a responsibility deficit is kept at a minimal level.

[102] Article XIII, Convention on the Prevention and Punishment of the Crime of Genocide, 1948.
[103] Breakey and Francis, "Points of Convergence and Divergence: Normative, Institutional and Operational Relationships between R2P and PoC", *Security Challenges* 2011, Vol. 7, No. 4, p. 46.
[104] Articles 10, 11 and 99, Charter of the United Nations, 1945.
[105] Articles 10 and 11, Charter of the United Nations, 1945.
[106] Article 99, Charter of the United Nations, 1945.
[107] Report of the International Commission of Intervention and State Sovereignty, *The Responsibility to Protect*, 2001, paragraph 6.11.
[108] Ibid., paragraph 6.11.

2.2. Three Pillars of Responsibility to Protect

2.2.1. Sovereignty as Responsibility

Firstly, R2P lies utmost with the state.[109] This first pillar of the doctrine of R2P is founded on the permanent responsibility of states to protect its population within its jurisdiction, meaning not only the relatively new concept of R2P, but also previous legal obligations derived from continuing and long-standing legal obligations under international law.[110] Jurisdiction and sovereignty walk hand in hand, as jurisdiction under international law directly refers to the competence of a state to regulate persons situated in its territory; both its own nationals and foreigners, as well as natural and legal persons.[111] In international law, sovereignty implies the legal identity of a state and the ability to make conclusive decisions within the territory of the state, in other words to exercise jurisdiction within its territorial borders.[112] Hence, it can be said that "extraterritorial exercise of force inside another state infringes that state's jurisdictional monopoly of force within its borders" by the concept of sovereignty,[113] as sovereignty is most often interpreted as implying "a right against interference or intervention by any foreign (or international) power".[114] "[S]overeignty is more than just a functional principle of international relations", [115] sovereignty can also be a symbol for "equal worth and dignity",[116] a protection of unique cultural identities and national freedom.[117] As well as that, sovereignty bears a dual responsibility of external and internal respect.[118] External respect, on the one hand, extending to respecting the international community, as in respecting the sovereignty of other states.[119] Internal respect, on the other hand, embracing to respect the

[109] Report of the International Commission of Intervention and State Sovereignty, *The Responsibility to Protect*, 2001, Basic Principles A), p. xi, Report of the Secretary-General*, Implementing the Responsibility to Protect*, 12 January 2009, UN doc. A/63/677, p. 10.
[110] Report of the Secretary-General*, Implementing the Responsibility to Protect* 12 January 2009, UN doc. A/63/677, p. 8.
[111] Cooreman, 2017, p. 85.
[112] Report of the International Commission of Intervention and State Sovereignty, *The Responsibility to Protect*, 2001, paragraph 2.7.
[113] Colangelo, "What Is Extraterritorial Jurisdiction", *Cornell Law Review* 2014, Vol. 99, No. 6, p. 1311.
[114] Jackson, "Sovereignty-Modern: A New Approach To An Outdated Concept", *AJIL* 2003, Vol. 97, No. 4, p. 782.
[115] Report of the International Commission of Intervention and State Sovereignty, *The Responsibility to Protect*, 2001, paragraph 1.32.
[116] Ibid., paragraph 1.32.
[117] Ibid., paragraph 1.32.
[118] Ibid., paragraph 1.35.
[119] Ibid., paragraph 1.35.

people within the state, e.g. respecting their dignity and basic human rights,[120] as well as protection of safety and promotion of their citizens welfare.[121]

The relationship between sovereignty and human rights needs to be re-evaluated in the sense that the view on sovereignty needs to be seen as a shift from "sovereignty as control to sovereignty as responsibility".[122] In other words, this contends the fact that sovereignty cannot be used as a pre-requisite for acts of violence within a state, sovereignty is not to be understood as an authority entitling to (whatever) domestic activities the state and its authorities desire, but on the contrary, the basis for sovereignty is the fundamental protection of peoples most fundamental human rights.[123] Thus, sovereignty is no longer admitted as a defence for atrocities,[124] which it did formerly, as historically, before the 20th century, state sovereignty implied an undeniable, domestic monopoly on the use of force.[125] The protection responsibilities of the state includes not only protection for nationals, but protection from genocide, war crimes, ethnic cleansing and crimes against humanity for anyone present in the territory, were it nationals, foreigners, residents or visitors.[126] Deng has pointed out that sovereignty is compiled of certain international privileges and of enduring obligations towards one's own people.[127] Thereby meaning that, fulfilment of fundamental protection obligations and respect of core human rights would decrease the state's concerns of unwelcome international intervention.[128]

2.2.2. Responsibility to Protect as International Back-Up

Secondly, international assistance and capacity-building or international back-up R2P enhances the commitment of the international community to support each other in meeting the obligations

[120] Ibid., paragraph 1.35.
[121] Ibid., paragraph 2.15.
[122] Ibid., paragraph 2.14.
[123] Breakey, "The responsibility to protect: Game change and regime change", in Francis, Popovski and Sampford (eds.), 2012, p. 12.
[124] Ibid., p. 12.
[125] Thakur, "Libya and the Responsibility to Protect: Between Opportunistic Humanitarianism and Value-Free Pragmatism", *Security Challenges* 2011, Vol. 7, No. 4, p. 13.
[126] Report of the Secretary-General, *Implementing the Responsibility to Protect*, 12 January 2009, UN doc. A/63/677, p. 8.
[127] Deng (ed.), 1996.
[128] Ibid.

of R2P.[129] This second element of R2P relates to assisting a state to fulfil its primary element protection responsibilities, in other words, when a state is unable to fully meet its first pillar responsibilities, be it "because of capacity deficits or lack of territorial control",[130] then the international community ought to be ready to assist and support this state to meet its core obligations.[131]

The co-operation intended by the principle of R2P engages various parties from international co-operation to regional, sub-regional, private sector and civil society mechanisms.[132] Measures intended by the ICISS and the UN in the question of intervention are economic, political and judicial measures, by way of example political, diplomatic or economic sanctions; military intervention is only justified in "extreme cases".[133] The scope of measures of intervention within the framework of R2P goes from domestic to bilateral, regional and international measures, commencing from power-sharing agreements,[134] to military force as a last resort.[135]

2.2.3. Responsibility to Protect and Manner of Intervention

Thirdly, when a state fails to provide protection to its citizens, then the international community's responsibility is to "respond collectively in a timely and decisive manner".[136] This third element not only includes the responsibility to react, prevent and stop, but also the responsibility to follow through and rebuild.[137] This way it is possible to ensure "sustainable reconstruction and rehabilitation" of a society demolished by large scale violations of human rights.[138]

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[129] Report of the Secretary-General, *Implementing the Responsibility to Protect*, 12 January 2009, UN doc. A/63/677, p. 15.
[130] Ibid., p. 10.
[131] Ibid., p. 10.
[132] Ibid., p. 15.
[133] Report of the International Commission of Intervention and State Sovereignty, *The Responsibility to Protect*, 2001, paragraphs 4.1. and 4.4.
[134] See Schneider, *Implementing the Responsibility to Protect in Kenya and Beyond*, International Crisis Group, 2010, available at: https://www.crisisgroup.org/africa/horn-africa/kenya/implementing-responsibility-protect-kenya-and-beyond
[135] Popovski, "The Concepts of Responsibility to Protect and Protection of Civilians: 'Sisters, but not Twins'", *Security Challenges* 2011, Vol. 7, No. 4, p. 4.
[136] Report of the Secretary-General, *Implementing the Responsibility to Protect*, 12 January 2009, UN doc. A/63/677, p. 9.
[137] Report of the International Commission of Intervention and State Sovereignty, *The Responsibility to Protect*, 2001, paragraph 5.1.
[138] Ibid., paragraph 5.2.

What still causes controversy among states, within the concept of R2P and international intervention, is the fact that international intervention on human protection grounds is generally by many states viewed as military intervention in the territory of another state and humanitarian intervention, which purpose is to protect, prevent and stop gross violations of human rights, would be taken as a *prima facie* violation of international law.[139] The notion of military intervention is, hence, the most problematic and controversial part of the doctrine of R2P.[140] Namely, military intervention would strongly contradict the principle of non-intervention and sovereignty.[141] As, since the establishment of the UN, in the aftermath of the WWII, the principle of non-intervention had been viewed as one of the only defence mechanisms granting protection against international actors pressing smaller states with economic and political interests.[142] This being a restricting factor regarding development of humanitarian intervention in internal situations of human rights violations.[143] One of the reasons to why international intervention is still understood as controversial is the fact that the concept includes such a wide range of activities, and so the views regarding what is international intervention vary.[144] When discussing the doctrine of R2P, international intervention consists of activity "taken against a state or its leaders, without its or their consent for purposes which are claimed to be humanitarian or protective".[145] In order to establish this kind of international intervention founded on human protection there needs to be clear rules, procedures and criteria to determine when and how to intervene.[146] After international, non-military intervention has been undertaken, but it has failed to enhance prospects for sustainable peace and military intervention is therefore necessary, then military intervention should be established as legitimate.[147]

[139] Stockburger, "The Responsibility to Protect Doctrine: Customary International Law, an Emerging Legal Norm or Just Wishful Thinking?", *Intercultural Human Rights Law Review* 2010, Vol. 5, p. 367.
[140] Evans, "From Humanitarian Intervention to the Responsibility to Protect", *Wisconsin International Law Journal* 2006, Vol. 24, No. 3, p. 709.
[141] Article 2(4), Charter of the United Nations, 1945, and Stockburger, "The Responsibility to Protect Doctrine: Customary International Law, an Emerging Legal Norm or Just Wishful Thinking?", *Intercultural Human Rights Law Review* 2010, Vol. 5, p. 367.
[142] Evans, "From Humanitarian Intervention to the Responsibility to Protect", *Wisconsin International Law Journal* 2006, Vol. 24, No. 3, p. 705.
[143] Ibid., p. 705.
[144] Report of the International Commission of Intervention and State Sovereignty, *The Responsibility to Protect*, 2001, paragraph 1.37.
[145] Ibid., paragraph 1.38.
[146] Ibid., paragraph 2.3.
[147] Ibid., paragraph 2.3.

International military intervention needs to be purpose-oriented and effective, all the while minimising civilian damage and human loss.[148] When all means of non-military intervention have been exhausted, military intervention can be justified, however, only in extreme cases and according to the criteria for military intervention set out by the ICISS.[149] According to the ICISS-report there are six criteria for determining when military intervention is justified:

1) right authority,
2) just cause,
3) right intention,
4) last resort,
5) proportional means and
6) reasonable prospects. [150]

For military intervention to be justified for human protection and human security reasons, "serious and irreparable harm" needs to be occurring or threateningly likely to occur in the territory.[151] Additionally, military intervention for the purposes of human protection is to be seen as an "exceptional and extraordinary measure".[152] There are two sets of circumstances justifying military intervention for the purposes of human protection according to the ICISS report.[153] And when either or both of these two conditions are met, the ICISS report declares a military intervention decision to be "amply satisfied".[154] Still, according to the ICISS report, the two conditions need further explanation for defining the "conscience-shocking" situations intended.[155]

[148] Ibid., paragraph 2.3.
[149] Ibid., paragraphs 4.1, 4.4 and 4.16.
[150] Ibid., paragraph 4.16.
[151] Ibid., paragraph 4.18.
[152] Ibid., paragraph 4.18.
[153] Ibid., paragraphs 4.19 and 4.20.
[154] Report of the International Commission of Intervention and State Sovereignty, *The Responsibility to Protect*, 2001, paragraph 4.19:"1. large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or 2. large scale "ethnic cleansing," actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape."
[155] Report of the International Commission of Intervention and State Sovereignty, *The Responsibility to Protect*, 2001, paragraph 4.20:"1. those actions defined by the framework of the 1948 Genocide Convention that involve large scale threatened or actual loss of life; 2. the threat or occurrence of large scale loss of life, whether the product of genocidal intent or not, and whether or not involving state action; 3. different manifestations of "ethnic cleansing," including the systematic killing of members of a particular group in order to diminish or eliminate their presence in a particular area; the systematic physical removal of members of a particular group from a particular geographical area; acts of terror designed to force people to flee; and the systematic rape for political purposes of women of a particular group (either as another form of terrorism, or as a means of changing the ethnic composition of that group); 4. those crimes against humanity and violations of the laws of war, as defined in the Geneva Conventions and Additional Protocols and elsewhere, which involve large scale killing or ethnic cleansing; 5. situations of state collapse and the resultant exposure of the population to mass starvation and/or civil war; and 6.

The principle of responsibility to protect does not distinguish between harm caused by state action or non-state actors, if the circumstances are grave enough, international military intervention for the purpose of human protection is justified by the pure knowledge of such grave violations and irreparable damage caused to civilians.[156] Apart from the problematics with R2P and international military intervention, there is another equally important problem related to the doctrine, namely the lack of political will to react and to mobilise.[157] There is a lack of political will regarding preventive action, non-military intervention and military intervention.[158]

2.3. Protection of Civilians

2.3.1. Background

The principle of civilian protection has several titles, like non-combatant immunity or the principle of distinction between combatants and non-combatants.[159] Nonetheless, the core of the principle is the same no matter how the principle is addressed, namely the obligation for the parties to an armed conflict to refrain from directing attacks on civilian population and civilian objects.[160] In other words, combatants and military objectives are the only legitimate aims for attacks during armed conflict.[161] All parties to an armed conflict are responsible for protecting civilians, by seeking to minimize harm caused to civilians and civilian objects,[162] meaning belligerent parties are not to consider placing military objectives in the direct vicinity of places where there are much civilians, like towns, villages or near schools or hospitals.[163] Historically,

overwhelming natural or environmental catastrophes, where the state concerned is either unwilling or unable to cope, or call for assistance, and significant loss of life is occurring or threatened."

[156] Report of the International Commission of Intervention and State Sovereignty, *The Responsibility to Protect*, 2001, paragraph. 4.22.

[157] Evans, "From Humanitarian Intervention to the Responsibility to Protect", *Wisconsin International Law Journal* 2006, Vol. 24, No. 3, p. 720.

[158] Ibid., pp. 720-721.

[159] Nishimura, "The Principle of Civilian Protection and Contemporary Warfare" in Hensel (ed.), 2005, p. 105.

[160] Articles 48, 51, 52, 57, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1977 and Article 3 Common to the four Geneva Conventions, 1949.

[161] Article 4, Convention relative to the Treatment of Prisoners of War, 1949, Article 43, 50 and 51, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1977, in particular paragraph 7 of Article 51, together with Henckaerts and Doswald-Beck, 2005, pp. 337-340, Rule 97: "The use of human shields is prohibited".

[162] Articles 48 and 57, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1977.

[163] Ibid., Articles 48, 52 and 57.

POC to some extent consists of "reducing the effects of conflict" and it has so done within the framework of the UN.[164] A manner of protecting the civilian population and civilian objects is the prohibition of indiscriminate attacks, indiscriminate attacks being for example attacks not directly targeted at military objectives.[165] Indiscriminate attacks then constituting part of the general principles of CIL, these being: the notion of military objective; the duty to take precautions, the prohibition of indiscriminate attacks and the rule of proportionality.[166] According to Smith, Whalan and Thompson "civilian protection is now broadly understood to be an inherent objective of contemporary peacekeeping",[167] then pointing at the POC agenda of the UNSC that "focuses primarily on the implementation of protection through the mandates of UN peace operations"[168]

In the *Advisory Service on International Humanitarian Law* by the International Committee of the Red Cross and the Red Crescent (ICRC) it is said that "[t]he main purpose of international humanitarian law is to limit the effects of armed conflict, for humanitarian reasons, by protecting people not participating or no longer taking part in hostilities".[169] IHL has seen different stages of development since the first Geneva Convention of 1864, namely the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, the IHL of today therefore also looks somewhat different.[170] Naturally, not only IHL has developed in a vacuum, but the world itself has evolved and the character of both inter-state and intra-state armed conflicts has changed during time. The concept of armed conflict is complex, as no conflict is the other alike. At the international level, the most extensive and traditional form of threat to a state is a situation of armed conflict and simultaneously an armed conflict represents "the most extreme threat" at the level of individual security.[171] An armed conflict represents a threat to the security of the civilian population of a state and despite a situation of armed

[164] Sampford, "A Feuerbachian Inversion: From Sovereign Rights and Subjects Duties to Citizen Rights and State Duties", *Security Challenges* 2011, Vol. 7, No. 4, p. 56.
[165] Article 51(4), Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1977.
[166] Cassese, "The Geneva Protocols of 1977 on the Humanitarian Law of Armed Conflict and Customary International Law", UCLA *Pacific Basin Law Journal* 1984, Vol. 3, No. 1-2, pp. 82–86.
[167] Smith, Whalan and Thomson, "The Protection of Civilians in UN Peacekeeping Operations: Recent Developments", *Security Challenges* 2011, Vol. 7, No. 4, p. 30.
[168] Ibid., p. 30.
[169] Advisory Service on International Humanitarian Law, ICRC, 2004.
[170] Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, Geneva, 22 August 1864.
[171] Sassòli, "The Concept of Security in International Law Relating to Armed Conflicts" in Bailliet (ed.), 2009, p. 7.

conflict, a state is responsible to protect the security of its civilians, regulated by state obligations and international law.[172] Consequently, the primary responsibility to protect its civilians and secure POC lies in the hands of the national state, despite of this, in a situation of armed conflict, this state obligation is repeatedly neglected and disrespected. States have the primary duty to protect their civilians and civilians have a right to protection.[173]

The UN plays a fairly important role when regarding protection of civilians, if not to say one of the most important roles. Specific reference to POC has its origins in the UNSC from the last decade of the last century,[174] since then POC has been supported in a number of reports by the UNSG to the UNSC,[175] in UNSC resolutions,[176] and in UNSC presidential statements.[177] The former UNSG Ban Ki-moon has pointed out the following regarding POC:

> we must focus our efforts on enhancing protection where and for whom it matters most — on the ground, in the midst of conflict and for the hundreds of thousands of civilians who are, on a daily basis, at risk of, or fall victim to, serious violations of international humanitarian law and human rights law.[178]

Accordingly, POC is part of several UNSC mandates, namely in Afghanistan,[179] Central African Republic,[180] Côte d'Ivoire,[181] Darfur,[182] Democratic Republic of Congo,[183] Haiti,[184]

[172] Article 51(8), Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1977 and Sassòli, "The Concept of Security in International Law Relating to Armed Conflicts" in Bailliet (ed.), 2009, p. 7.
[173] Sampford, "A Feuerbachian Inversion: From Sovereign Rights and Subjects Duties to Citizen Rights and State Duties", *Security Challenges* 2011, Vol. 7, No. 4, pp. 51-60.
[174] Ferris, 2011.
[175] UN Secretary-General Reports: S/1999/957, S/2001/331, S/2002/1300, S/2004/431, S/2005/ 740, S/2007/643 and S/2009/277.
[176] UN Security Council Resolutions: S/RES/1265, S/RES/1296, S/RES/1674 and S/RES/1738.
[177] Statements by the President of the UN Security Council: S/PRST/1999/6, S/PRST/2002/6, S/PRST/2002/41, S/PRST/2003/27, S/PRST/2004/46, S/PRST/2005/25, S/PRST/2009/1 and S/PRST/2009/9.
[178] Report of the Secretary-General on the protection of civilians in armed conflict, S/2010/579, 11 November 2010.
[179] United Nations Assistance Mission in Afghanistan (UNAMA), established by UNSC Resolution 1401, 28 March 2002, UN doc. S/RES/1401.
[180] United Nations Mission in the Central African Republic and Chad (MINURCAT), established by UNSC Resolution 1861, 14 January 2009, UN doc. S/RES/1861, UNSC Resolution 1834, 24 September 2008, UN doc. S/RES/1834 and UNSC Resolution 1778, 25 September 2007, UN doc. S/RES/1778.
[181] United Nations Operation in Côte d'Ivoire (UNOCI), established by UNSC Resolution 1528, 27 February 2004, UN doc. S/RES/1528.
[182] United Nations – African Union Hybrid Operation in Darfur (UNAMID), established by UNSC Resolution 2148, 3 April 2014, UN doc. S/RES/2148.
[183] United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), established by UNSC Resolution 1279, 30 November 1999, UN doc. S/RES/1279.
[184] United Nations Stabilization Mission in Haiti (MINUSTAH), established by UNSC Resolution 1542, 30 April 2004, UN doc. S/RES/1542.

Liberia[185] and Sudan.[186] Peacekeeping operations have different mandates with the purpose to secure basic protection like security, food, medical assistance and the rule of law.[187] Measuring effectiveness or success of a peacekeeping mission varies according to its mandate, however, to "the extent that traditional peacekeeping missions helped to manage or end conflict, they coincidentally may have contributed to protecting civilians".[188]

A situation of armed conflict is at its foremost a situation of exception and in order to be determined and classified as either an IAC or a NIAC, an armed conflict needs to fulfil requisite conditions set forth under IHL.[189] However, the legal determination of 'armed conflict' itself under IHL is simple; the requirement is a presence of militarily structured armed resistance or "of UN troops being involved in the fighting".[190] An inferior affair within a particular jurisdiction may start as a situation that activates R2P, then develop into a situation of armed conflict and hence engage POC and still further develop into an IAC with several counterparts.[191] The situation the most likely to appear, is there to be involvement from international instances as well, and not to mention the UNSC, it being the one organ accorded to decide upon military intervention when regarding international security and peace, and the maintenance thereof.[192] In order to identify what constitutes an armed attack one can pose the question whether all use of force, also all prohibited force is an armed attack.[193]

[185] United Nations Mission in Liberia (UNMIL), established by UNSC Resolution 1509, 19 September 2003, UN doc. S/RES/1509.
[186] United Nations Mission in Sudan (UNMIS), established by UNSC Resolution 1590, 24 March 2005, UN doc. S/RES/1590.
[187] Sampford, "A Feuerbachian Inversion: From Sovereign Rights and Subjects Duties to Citizen Rights and State Duties", *Security Challenges* 2011, Vol. 7, No. 4, p. 59.
[188] Smith, Whalan and Thomson, "The Protection of Civilians in UN Peacekeeping Operations: Recent Developments", *Security Challenges* 2011, Vol. 7, No. 4, p. 31.
[189] I*nternational Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, ICRC, 31IC/11/5.1.2, p. 7.
[190] Kolb and Hyde, 2008, pp. 78-81, Breakey and Francis, "Points of Convergence and Divergence: Normative, Institutional and Operational Relationships between R2P and PoC", *Security Challenges* 2011, Vol. 7, No. 4, p. 43.
[191] Popovski, "The Concepts of Responsibility to Protect and Protection of Civilians: 'Sisters, but not Twins'", *Security Challenges* 2011, Vol. 7, No. 4, pp. 4-5.
[192] Articles 1(1), 1(3), 24(1) and 42, Charter of the United Nations,1945.
[193] Higgins, 1994, p. 248. The concept of armed attack and the question of prohibited force has been examined in *Nicaragua v. United States*, ICJ Reports, 1986, pp. 103-104: "But the Court does not believe that the concept of "armed attack" includes not only acts by armed bands where such acts occur on a significant scale but also assistance to rebels in the form of the provision of weapons or logistical or other support. Such assistance may be regarded as a threat or use of force, or amount to intervention in the internal or external affairs of other States."

An example of a situation that was initiated by engagement of R2P and not as a situation of armed conflict, and then developed into a situation that parallelly engaged the POC in a situation of armed conflict, is Libya in 2011.[194] The situation in Libya in 2011 was first described by the UNSC as a situation of "gross and systematic violation of human rights, including the repression of peaceful demonstrators" and "use of force against civilians", but not as an armed conflict.[195] Thus, a situation of crimes against humanity that engaged the R2P. Few weeks later the situation in Libya was already referred to as an armed conflict by the UNSC and POC was engaged as POC applies not only in IACs but also in NIACs.[196] The UNSC Resolutions 1970 and 1973, from February and March 2011, were a turning point for the doctrine of R2P, as they marked the development "from concept to concrete action".[197]

Despite the humanitarian wish to protect civilians during armed conflict, the principle of POC is far from self-evident in practice.[198] Reality and practice are not at the same level as the existing rules and principles for protection.[199] Article 3 Common to the four 1949 Geneva Conventions addresses the minimum requirements of civilian protection in NIAC and is not to be disregarded in the discussion regarding armed conflicts, IHL and its principle of POC.[200] POC consists of civilians and civilian objects not being made the target of an attack nor of a planned attack.[201]

The International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) as well as the International Criminal Court (ICC) and the ICJ have contributed to the shaping of the view on POC in armed conflicts by their judgements. The ICJ and its advisory opinion on the legality of nuclear weapons, as well as the threat or use thereof in the case *Legality of the Threat or Use of Nuclear Weapons* from 1996,

[194] See Resolution 1970, 26 February 2011, UN doc. S/RES/1970, Resolution 1973, 17 March 2011, UN doc. S/RES/1973 and Popovski, "The Concepts of Responsibility to Protect and Protection of Civilians: 'Sisters, but not Twins'", *Security Challenges* 2011, Vol. 7, No. 4, pp. 4-5.
[195] Resolution 1970, 26 February 2011, UN doc. S/RES/1970, p. 1.
[196] Resolution 1973, 17 March 2011, UN doc. S/RES/1973, pp. 1-3.
[197] Breakey and Francis, "Points of Convergence and Divergence: Normative, Institutional and Operational Relationships between R2P and PoC", *Security Challenges* 2011, Vol. 7, No. 4, p. 40.
[198] Valentino, Huth and Croco, "Covenants without the Sword: International Law and the Protection of Civilians in Times of War", *World Politics*, 2006, Vol. 58, No. 3, p. 341.
[199] Nishimura, "The Principle of Civilian Protection and Contemporary Warfare" in Hensel (ed.), 2005, p. 106.
[200] Article 3 Common to the four Geneva Conventions, 1949.
[201] Article 43 and 50, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1977, Article 4(6), Convention relative to the Treatment of Prisoners of War, 1949 and Henckaerts and Doswald-Beck, 2005, pp. 17-19, Rule 5.

was the first of the international courts to address jurisprudence regarding the principle of civilian protection and non-combatant immunity.[202] The ICJ stated there are two "cardinal principles" being the principles of protection of civilian population and the prohibition of causing "unnecessary suffering to combatants".[203] The principle of POC is by the opinion of the ICJ "aimed at the protection of the civilian population and civilian objects and establishes the distinction between combatants and non-combatants".[204] This meaning that "[s]tates must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets".[205] POC population was discussed by the ICTY in, among others, the *Prosecutor v. Duško Tadic* case.[206] The *Tadic* case has contributed to the development of both IHL and POC.[207]

Many of the principles and rules of the APII "can now be regarded as declaratory of existing rules or as having crystallised emerging rules of customary law or as else as having been strongly instrumental in their evolution as general principles",[208] this can be seen in the ICTY Appeals Chamber judgement in the case of the *Prosecutor v. Duško Tadic*. The ICTY judgement in the *Tadic* case stated CIL is applicable to civil wars and "aimed at protecting the civilian population from the hostilities".[209] CIL or the formation thereof and "the formation of general rules or principles designed to protect civilians or civilian objects from hostilities or, more generally, to protect those who do not (or no longer) take active part in hostilities" is seen as valid by the ICTY.[210] In other words, ICTY regarded POC as a legal rule in NIAC, by acknowledging the purposes and logics of IHL and not only by focusing on the actual behaviour of states in armed conflicts.[211]

[202] Nishimura, "The Principle of Civilian Protection and Contemporary Warfare" in Hensel (ed.), 2005, p. 116 and *Legality of the Threat or Use of Nuclear Weapons,* Advisory Opinion, ICJ Reports 1996, p. 226.
[203] *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, p. 226, paragraph 78.
[204] Ibid., paragraph 78.
[205] Ibid., paragraph 78.
[206] *The Prosecutor v. Duško Tadic*, International Criminal Tribunal for the Former Yugoslavia Appeals Chamber, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995.
[207] Nishimura, "The Principle of Civilian Protection and Contemporary Warfare" in Hensel (ed.), 2005, p. 117.
[208] *The Prosecutor v. Duško Tadic*, International Criminal Tribunal for the Former Yugoslavia Appeals Chamber, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, paragraph 117.
[209] Ibid., paragraph 100.
[210] Ibid., paragraph 119.
[211] Ibid., paragraph 117 and Nishimura, "The Principle of Civilian Protection and Contemporary Warfare" in Hensel (ed.), 2005, p. 118.

Article 57 of the API implicates all precautions should be taken into account when planning an attack, in order to spare civilian population from death and serious injury, as well as to spare civilian objects from unnecessary damage.[212] If it is uncertain whether a civilian object is used for military actions or not, it is to be assumed that the object is not used for military actions, but being used for civilian purposes.[213] As mentioned before, ammunition and weapons storage are distinct military objectives and therefore are not to be placed near densely populated areas or in the close vicinity of civilian objects like a facility of primary education or other educational facilities, as it is an evident military target running high risk of being attacked by opposing parties.[214] Using education facilities for military purposes while pupils and teachers are in the building(s) used for education, demonstrates a failure of fulfilling the duty to take precautions when planning an attack and to minimise the harm caused to civilians and civilian objects.[215] Civilians may not be used as human shields or removed from their natural habitat, in order to change the character of an objective for a planned attack, by way of example, by making a military objective a civilian object by moving a civilian population to a military objective or to the close vicinity of a military objective.[216] The use of human shields is prohibited, hence, preventing civilians e.g. pupils and teachers from leaving a school building is a manner of using human shields.[217]

The merge of civil wars has replaced inter-state conflicts and thus, war crimes have been exposed to extended groups of vulnerable people.[218] "Since times immemorial, man has sought security",[219] security from threats that could affect both national and international security and the means to grant a feeling of security.[220] Threats caused by nature are, by way of example threats of shortage of water, threats of natural disasters like earth quakes or tsunamis and threats caused by man are i.e. threats of a terror attack, threats of poverty, and threats concerning national security posed by another state e.g. the threat of an armed conflict or threat of using

[212] Article 57, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1977.
[213] Ibid., Article 52(3).
[214] Ibid., Article 57(2b).
[215] Ibid., Article 57.
[216] Ibid., Article 51, in particular paragraph 7, together with Henckaerts and Doswald-Beck, 2005, Rule 97, pp. 337-340.
[217] Article 51, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1977, in particular paragraph 7, together with Henckaerts and Doswald-Beck, 2005, Rule 97, pp. 337-340.
[218] Francis and Sampford "Introduction" in Francis, Popovski and Sampford (eds.), 2012, p. 1.
[219] Dahl, "Foreword" in Bailliet (ed.), 2009, p. ix.
[220] Ibid., p. ix.

nuclear weapons.[221] The threat of war crimes, ethnic cleansing and genocide are growingly exposed to children and women, which has been highlighted at a constant by the UN at several occasions.[222] Young girls are exposed to augmented security risks caused by armed conflicts, besides leading to fear of sexual harassment by armed forces, school drop-out and violence, in addition, this can develop into long-term effects for overall gender inequality in society.[223] Refugee camps and camps for internally displaced persons (IDPs) where civilians in an inescapable way are close, if not mixed together with combatants and other elements of war, are numerous and can render both protection and danger for civilians.[224] Civilians who flee across borders are to be protected by the governments of the jurisdiction they flee to, whereas protection of IDPs falls to the national governments.[225] Over time, the concept of security has transformed and developed.[226] International assistance is not accepted by all governments, or the process of accepting international assistance is prolonged, sometimes intentionally it seems.[227] During armed conflict, state practice and principles of IHL do not always coincide. When there is an armed conflict, rules of IHL are somewhat forgotten or neglected by states and consequently, humanitarian rules are violated when there is an armed conflict.[228]

POC has evolved during time, however halting it sometimes seems to be and especially it has evolved during the last decade of the 20th century.[229] Humanitarian assistance has evolved in several different ways, like the establishment of intergovernmental legislative frameworks within the UN; of the UNGA, of the UN Economic and Social Council (ECOSOC) and of the

[221] See Bailliet, "Introduction"; Dahl, "Foreword" and Voigt, [Security in a "Warming World": Competences of the UN Security Council for Preventing Dangerous Climate Change] in Bailliet (ed.), 2009.
[222] Francis and Sampford "Introduction" in Francis, Popovski and Sampford (eds.), 2012, p. 1.
[223] Global Coalition to Protect Education from Attack, *Education Under Attack 2018*, 2018, p. 29.
[224] Francis and Sampford "Introduction" in Francis, Popovski and Sampford (eds.), 2012, p. 1.
[225] Ferris and Kirisci, 2016, p.72.
[226] A study submitted by the UNSG as UN Secretary-General Report A/40/553, 26 August 1985, was carried out by a group of governmental experts appointed by the UNSG pursuant to UNGA Resolution 38/188 H, 20 December 1983, UN doc. A/RES/38/188 H, which called for "a comprehensive study of concepts of security, in particular security policies which emphasize co-operative efforts and mutual understanding between States, with a view to developing proposals for policies aimed at preventing the arms race, building confidence in relations between States, enhancing the possibility of reaching agreements on arms limitation and disarmament and promoting political and economic security". UN Secretary-General Report A/40/553, 26 August 1985, p. 10: security as defined by a UN group of experts "a condition in which States consider that there is no danger of military attack, political pressure or economic coercion, so that they are able to pursue freely their own development and progress. International security is thus the result and the sum of the security of each and every State member of the international community; accordingly, international security cannot be reached without full international co-operation. However, security is a relative rather than an absolute term. National and international security need to be viewed as matters of degree."
[227] Francis and Sampford "Introduction" in Francis, Popovski and Sampford (eds.), 2012, p. 2.
[228] Nishimura, "The Principle of Civilian Protection and Contemporary Warfare" in Hensel (ed.), 2005, p. 106.
[229] Francis and Sampford "Introduction" in Francis, Popovski and Sampford (eds.), 2012, p. 1.

UNSC.[230] Apart from this normative development, organisational mechanisms, such as the Inter-Agency Standing Committee (IASC), evolved for coordination of humanitarian assistance.[231] The 1990s also saw an expansion of both civil and military actors involved in the chain of providing humanitarian assistance and protecting civilians.[232] This then taking POC and humanitarian assistance to a new level of priority. Nevertheless, the 1990s was a time featured by a number of humanitarian tragedies like Rwanda (1994), Srebrenica (1995) and Kosovo (1999) to name a few. These events demonstrated a weak ability of the international community to protect civilians during armed conflict.[233] At the same time, humanitarian emergencies like these made it problematic to reach consensus decisions among UN members.[234] Since the 1990s, multiple efforts have been taken in order to establish effective POC during armed conflict. New strategies are developed and employed, strategies that are based on human rights and effective POC.[235] The doctrine of R2P has evolved as one of the most distinguished measures of protection of civilians.[236]

2.3.2. Legal Framework of Protection of Civilians

Civilian protection is one of the cornerstones of the law of armed conflict and the principle of civilian protection is one of the most important principles in IHL.[237] IHL can be translated into the law of war, *jus in bello* and the law of armed conflict. IHL applies in any situation of armed conflict, no matter unlawful or lawful a conflict.[238] The four Geneva Conventions and their Additional Protocols cover the laws of war and are, hence, strongly connected with POC, however, the GCIV is concentrating on protecting civilians in times of war.[239] The UNSC, through its authority to maintain international peace and security, possesses the authority for action in questions of POC.[240]

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[230] Ibid., p. 1.
[231] Ibid., p. 1.
[232] Ibid., p. 1.
[233] Ibid., pp. 1-2.
[234] Ibid., p. 2.
[235] Ibid., p. 2.
[236] See Report of the International Commission of Intervention and State Sovereignty, *The Responsibility to Protect*, 2001, and Report of the Secretary-General*, Implementing the Responsibility to Protect*, 12 January 2009, UN doc. A/63/677.
[237] Nishimura, "The Principle of Civilian Protection and Contemporary Warfare" in Hensel (ed.), 2005, p. 105.
[238] Sassòli, "The Concept of Security in International Law Relating to Armed Conflicts" in Bailliet (ed.), 2009, p. 8.
[239] Convention relative to the Protection of Civilian Persons in Time of War, 1949.
[240] Breakey and Francis, "Points of Convergence and Divergence: Normative, Institutional and Operational Relationships between R2P and PoC", *Security Challenges* 2011, Vol. 7, No. 4, p. 41.

2.4. Legal Definition of Civilian and Civilian Objects according to International Humanitarian Law

2.4.1. Civilians

According to Article 51 of the API, civilians are to be protected from hostilities and direct attack during armed conflict, therewith, targeting of civilians and civilian objects is prohibited.[241] A civilian or a civilian person, is a person not member of any armed force, also a person not directly taking part in hostilities is to be regarded a civilian person according to Article 50 of the API.[242] A person directly participating in hostilities during an armed conflict is therefore not to be seen a civilian person.[243] This rule applies for all persons, including members of non-organised armed groups like rebellion groupings or militias that do not form part of any state's national armed forces; when one openly carries arms or participates actively in hostilities, during an armed conflict as part of an organised armed force, then one is to be regarded not a civilian but a person participating actively in the armed conflict, a combatant or a person constituting part of an armed force.[244] According to Article 48 of the API and its basic rule, a distinction between combatants and civilians should be made at all times.[245] This "most elementary form" of the principle of civilian protection is frequently violated and especially so in NIACs.[246] Targeting civilians or civilian objects, like pupils, teachers and school buildings, in both IACs and in NIACs is prohibited, in spite of this, the principle of non-attacking and non-targeting of civilians and civilian objects is too often violated,[247] especially schools, hospitals and other similar protected zones, as well as their staff are constantly being attacked and occupied by fighting forces, this causing more distress, more wounded and more deaths.[248] This obligation contains the requirement for the parties to an armed conflict to distinguish

[241] Article 51, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1977.
[242] Ibid., Article 50.
[243] Ibid., Article 50 and Valentino, Huth and Croco, "Covenants without the Sword: International Law and the Protection of Civilians in Times of War", *World Politics*, 2006, Vol. 58, No. 3, p. 359.
[244] Article 43 and 50, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts 1977, Article 4, Convention relative to the Treatment of Prisoners of War, 1949 and Henckaerts and Doswald-Beck, 2005, Rule 5: "Civilians are persons who are not members of the armed forces. The civilian population comprises all persons who are civilians", pp. 17-19.
[245] Article 48, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1977.
[246] Nishimura, "The Principle of Civilian Protection and Contemporary Warfare" in Hensel (ed.), 2005, p. 106.
[247] Valentino, Huth and Croco, "Covenants without the Sword: International Law and the Protection of Civilians in Times of War", *World Politics*, 2006, Vol. 58, No. 3, p. 340.
[248] Education For All Global Monitoring Report, *The Hidden Crisis: Armed Conflict and Education*, Summary, 2011, p. 23.

between civilians and combatants at all times during an armed conflict.[249] As the principle of distinction between combatants and non-combatants has been widely violated by states, legal scholars have pledged for a more balanced view on reality and ideals, as the situation of today contains a gap between those two.[250] A gap, that does not seem to be closer to diminishing than it would have been ever before.[251] The difference between reality and ideals, together with the indifference of states towards humanitarian principles, have led legal scholars to a conclusion of denial of the principle of distinction between combatants and non-combatants, which on the one hand has resulted in the apologetic and on the other hand in the utopian view of POC during armed conflicts.[252]

In 2000, in the Trial Chambers judgment of the *Blaškic* case, the ICTY gave a definition of civilians as "persons who are not, or no longer, members of the armed forces".[253] For such time as a civilian person directly participates in an armed conflict by taking part in hostilities, that person is no longer to be regarded a civilian.[254] In other words, a civilian person can lose his or her civilian status, when and, if he or she participates in the hostilities of an armed conflict.[255] Consequently, a civilian person loses his or her civilian status the minute he or she directs actions in order to participate in hostilities of an armed conflict.[256] As a civilian, is then to be regarded a person not taking active or direct part in an armed conflict; indirect participation on the other hand, can be participation in humanitarian work, like aiding wounded and sick persons during an armed conflict, those persons indirectly participating in such actions are still to be regarded civilian persons; for as long as a person does not actively participate in the hostilities in any way.[257] Loss of civilian status, by actively participating in hostilities, and being a combatant are not birds of a feather, hence, a civilian taking active part in hostilities without

[249] Henckaerts and Doswald-Beck, 2005, Rule 1, pp. 3-8.
[250] Nishimura, "The Principle of Civilian Protection and Contemporary Warfare" in Hensel (ed.), 2005, p. 105.
[251] Ibid., pp. 105–107.
[252] For more information regarding apologetic and utopian view on POC see Nishimura, "The Principle of Civilian Protection and Contemporary Warfare" in Hensel (ed.), 2005, pp. 105–119.
[253] *Prosecutor v. Tihomir Blaškic*, International Criminal Tribunal for the Former Yugoslavia (Case No. IT-95-14-T), Judgement of 3 March 2000, paragraph 180.
[254] Article 51(3), Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1977.
[255] Ibid., Articles 50 and 51.
[256] Article 43 and 50, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1977, Article 4, Convention relative to the Treatment of Prisoners of War, 1949.
[257] Article 43, 50 and 51, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1977, Article 4, Convention relative to the Treatment of Prisoners of War, 1949.

belonging to any organised armed force does not automatically become entitled to combatant nor prisoner-of-war status upon capture, but can be tried under national law for participation in conflict.[258]

Levée en masse, or when the population of an un-occupied area spontaneously resists invading troops by taking up arms "without having time to form themselves into an armed force" is an exception to the rule of civilian immunity.[259]

2.4.2. Civilian Objects

"Civilian objects are protected against attack, unless and for such time as they are military objectives", Rule 10 in *Customary Rules of International Humanitarian Law* thus, refers to civilians and civilian objects only being protected by IHL for as long as no participation in direct hostile acts are taken.[260] This meaning, that by the moment a civilian object in any way directly and distinctly participates in the hostilities of an armed conflict, it loses its distinction as a civilian object and is therefore set under the plausible risk of an attack.[261] A civilian object loses its protection only during that time, when it is a military objective, which by way of example, means a civilian object, like a primary school facility can be a legitimate military target only during the time it is used for military purposes e.g. as a firing position or as an ammunition storage.[262] This can be interpreted as if a school facility is used as a firing position during night, then any planned attack should be conducted during this time; when the facility is emptied of civilians, e.g. children and teaching staff that are in the building during daytime.[263] During daytime when the building is no longer used for military purposes, it is considered a civilian object and should therefore be treated as a civilian object and not be made the subject of attack.[264] As it is prohibited to intentionally conduct attacks against purely civilian objects, like primary schools, hence this is seen to be a crime against international law.[265] This also

[258] Henckaerts and Doswald-Beck 2005, Rule 5, pp. 17-19.
[259] Article 4(6), Convention relative to the Treatment of Prisoners of War, 1949 and Henckaerts and Doswald-Beck, 2005, Rule 5, pp. 17-19.
[260] Henckaerts and Doswald-Beck, 2005, Rule 10, pp. 34-36:"Civilian objects are protected against attack, unless and for such time as they are military objectives".
[261] Ibid., Rule 10, pp. 34-36.
[262] Articles 48 and 52, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1977.
[263] Ibid., Article 52.
[264] Ibid., Articles 48, 50, 51, 52 and 57. Henckaert and Doswald-Beck, 2005, Rules 1, 5 and 10, pp. 3-8, pp. 17-19 and pp. 34-36.
[265] Henckaerts and Doswald-Beck, 2005, Rule 10, pp. 34-36.

being stated as a war crime in Article 8 of the 1998 ICC Statute.[266] It is prohibited to intentionally direct attacks at civilian hospitals, hospitals being marked and therefore also visible from aircrafts, this making it more difficult claiming targeting an ammunition and weapons storage nearby, as a hospital is marked and distinguishable from surrounding buildings.[267]

[266] Article 8 (2 (b) (ix)), Rome Statute of the International Criminal Court, 1998.
[267] Articles 18 and 19, Convention relative to the Protection of Civilian Persons in Time of War, 1949.

3. Legal Foundation for Extraterritorial Protection of Civilians

3.1. Territory and Extraterritorial

3.1.1. The Concept of Territory

This chapter will present jurisdiction, as a way of conduct to what extraterritorial jurisdiction and extraterritorial protection of civilians contains. Firstly, the concept of territory is presented and secondly the concept of extraterritoriality. Thirdly, jurisdiction in a general manner is discussed, followed by sub-chapters regarding more specific aspects of jurisdiction in situations of extraterritorial protection, such as the principles of subjective and objective territoriality and the principle of passive personality. Lastly, criteria for jurisdiction in situations of extraterritorial protection and respect for state sovereignty and exercise of extraterritorial jurisdiction are presented.

A territory, or an area of territory, can consist of land and territorial sea, in addition, the concept of territory consists of and includes seabed, subsoil, islands, islets and rocks.[268] Land territory and territorial sea, seabed and subsoil are covered by territorial sovereignty, territorial sovereignty being one out of four types of regime, in spatial terms of law.[269] State competences when regarding territory, are most often defined in terms of sovereignty and jurisdiction.[270] Whereas sovereignty refers to the legal personality of statehood as sovereignty as "plenary power over territory" and jurisdiction refers to specific aspects of statehood and sovereignty,[271] like rights and powers.[272] Legal state competences include disposal of territory.[273]

3.1.2. The Concept of Extraterritorial

By way of introduction, extraterritorial is a legal concept with varying use in international law discourse, all depending on the situation at hand.[274] Primarily, 'exterritorial' is associated with diplomatic freedom of embassies from jurisdiction of the territory of residence, meaning

[268] Crawford, 2012, p. 203.
[269] Ibid., p. 203. The four types of regime in spatial terms known by law are territorial sovereignty; territory that possess a status of its own, like trust territories; *res nullius* (area legally susceptible to acquisition by states but not as yet placed under territorial sovereignty); and *res communis* (the high seas and outer space).
[270] Crawford, 2012, p. 204.
[271] Ibid., p. 245.
[272] Ibid., p. 204.
[273] Ibid., p. 204.
[274] Buxbaum, "Territory, Territoriality and the Resolution of Jurisdictional Conflict", *AJCL* 2009, Vol. 57, No. 3, p. 631.

exclusion of territorial government.[275] Whereas 'extraterritorial' comprehends conduct "taking place beyond, regardless of a territory" or it can define a subject or conduct that is located outside a territory.[276] Exterritorial and extraterritorial are thus not to be mixed, as the two notions are far from identical.

When speaking of extraterritorial from a strictly linguistic point of view, one can see the word originates from Latin, *extra territorium,* and can simply be interpreted as "outside the territory".[277] Prescriptive enforcement of judicial exercise of jurisdiction outside a state's territory or jurisdiction, is under international law referred to as 'extraterritoriality'.[278] Both territorial and extraterritorial are concepts open to interpretation and much relies upon the legal system of the state concerned and their legislation.[279] When put as the contradiction of "territorial",[280] meaning within the territory of a state or e.g. territorial waters meaning waters under the jurisdiction of a state,[281] extraterritorial is seen as a place elongated from the territory of a specific state, outside the borders of this particular sovereign state.[282] All the same, extraterritorial includes a notion of geography and location, as "outside the territory",[283] as well as "inside the borders",[284] are notions used for defining the concept. Location of conduct and location of party are likewise two determining factors in the discussion on extraterritoriality.[285] Extraterritoriality, when regarding the legal notion of extraterritoriality, can be relevant in various kinds of questions, e.g. geographic scope of laws,[286] court power over foreign defendants,[287] rights of foreigners detained outside national territory,[288] ability of courts to consider causes of action taking place out of activity abroad.[289]

[275] Zalucki, "Extraterritorial Jurisdiction in International Law", *International Community Law Review*, 2015, Vol. 17, No. 4-5, p. 404.
[276] Ibid., p. 404.
[277] Extraterritorial, The Oxford English Dictionary, 2019.
[278] Cooreman, 2017, pp. 83-84.
[279] Colangelo, "What Is Extraterritorial Jurisdiction", *Cornell Law Review* 2014, Vol. 99, No. 6, pp. 1303-1314.
[280] For more information regarding the history of territoriality, see Ryngaert, 2015.
[281] Territorial, The Oxford English Dictionary, 2019
[282] Buxbaum, "Territory, Territoriality and the Resolution of Jurisdictional Conflict", *AJCL* 2009, Vol. 57, No. 3, pp. 631-632.
[283] Colangelo, "What Is Extraterritorial Jurisdiction", *Cornell Law Review* 2014, Vol. 99, No. 6, pp. 1303-1304.
[284] Ibid., p. 1303-1304.
[285] Ibid., p. 1305 and pp. 1313-1314.
[286] See *Robert Morrison v. National Australia Bank Ltd.*, 24 June 2010, 130 S.Ct. 2869, No. 08-1191.
[287] See *J.McIntyre Machinery, Ltd. v. Robert Nicastro*, 27 June 2011, 131 S.Ct. 2780, No. 09-1343 and *Goodyear Dunlop Tires Operations, S.A. v. Edgar D. Brown*, 27 June 2011, 131 S.Ct. 2846, No. 10-76.
[288] See *Lakhdar Boumediene v. George W. Bush*, 12 June 2008, 553 U.S. 723.
[289] See *Esther Kiobel, individually and on behalf of her late husband, Dr. Barinem Kiobel v. Royal Dutch Petroleum Co.*, 17 April 2013, 133 S.Ct. 1659, No. 10-1491.

3.2. Jurisdiction Regulates Extraterritorial Protection of Civilians

3.2.1. Jurisdiction in General

Before demonstrating the exercise of extraterritorial jurisdiction to protect, this chapter will begin with a short discussion on jurisdiction in general. Through issues of states' use of control, jurisdiction has become a central question in international law. From a strictly linguistic point of view 'jurisdiction' derives from the Latin words for 'law' and 'to speak' (*jus* or *juris*, and *dicere*) and can hence be interpreted as "to speak the law".[290] Jurisdiction in its most simple definition is about allocating competence.[291] Jurisdiction is what determines how far, *ratione loci,* the laws of a state might reach.[292] From a legal point of view, jurisdiction contains power to make legal decisions within a territory over which a legal authority, like a court or similar state-run institution, can extend its legal authority.[293] Whereas, in international human rights treaties, it is the jurisdiction of a state that is referred to, and not the jurisdiction of a court.[294] However, through globalisation, states have been pushed to act in circumstances beyond their territory and their territorial power. Jurisdiction is of preliminary importance, an issue that needs to be decided primarily. Jurisdiction of a state is normally confined to a specific, distinguished territory, but for this research it is relevant to research how that jurisdiction can be applied outside the national territory. Consequently, there is no one single meaning, but on the contrary, several meanings for the word 'jurisdiction' in international law.[295]

Under PIL there are basically two different approaches which are logically posed to the question of jurisdiction, namely, either states are allowed to exercise jurisdiction as they see fit, unless there are any prohibitive rules to the contrary, or states are prohibited from exercising jurisdiction as they see fit, unless there are any permissive rules to the contrary.[296] When states adopt laws that do not govern purely domestic matters, then jurisdiction is affected by international law.[297] Territory, nationality and effects of a conduct, affect how states conceive

[290] Jurisdiction, The Oxford English Dictionary, 2019.
[291] Higgins, 1994, pp. 56-57.
[292] Ryngaert, 2015, p. 5
[293] Jurisdiction, The Oxford English Dictionary, 2019.
[294] Milanovic, 2011, p. 19.
[295] Ibid., p. 39.
[296] Ryngaert, 2015, p. 29.
[297] Ibid., p. 5.

questions of jurisdiction.[298] The wording 'within its jurisdiction', is used in international human rights treaties to demonstrate the width of jurisdiction by showing national jurisdiction also can apply to territories outside the national borders of a state as 'within its jurisdiction' includes "any territory under the effective control of its authorities",[299] like e.g. aircrafts or ships registered in that state or when the offender or the victim is a national of that particular state.[300] According to international law, a state is prohibited from exercising jurisdiction in another state unless there is an international treaty or CIL that would permit a state to exercise its jurisdiction outside its national borders. One of the reasons as to why extraterritorial jurisdiction is both challenging and debated is because it is difficult to claim jurisdiction.[301] Respect of state sovereignty is one of the main principles of international law, it is also crucial for maintaining good international relations and this is why it needs to be justifiable to claim jurisdiction over extraterritorial conduct.[302] In international human rights treaties, jurisdiction is perceived as control over territory and control over the people within the territory, contrary to "jurisdiction to prescribe rules of domestic law and to enforce them".[303] The subjects of international law are states, which are indeed territorial entities, whereas sovereignty gives title to this power over territory. International law, however, is inconsiderate towards and provides no protection for "sovereignty for its own sake".[304] This is demonstrated in the *Island of Palmas* case:

> Territorial sovereignty, as has already been said, involves the exclusive right to display the activities of a State. This right has as corollary a duty: the obligation to protect within the territory the rights of other States, in particular their right to integrity and inviolability in peace and in war, together with the rights which each State may claim for its nationals in foreign territory. Without manifesting its territorial sovereignty in a manner corresponding to circumstances, the State cannot fulfil this duty. Territorial sovereignty cannot limit itself to its negative side, i.e. to excluding the activities of other States; for it serves to divide between nations the space upon which human activities are employed, in order to assure them at all points the minimum of protection of which international law is the guardian.[305]

And similarly emphasised by the ICJ in its *Namibia* advisory opinion:

> The fact that South Africa no longer has any title to administer the Territory does not release it from its obligations and responsibilities under international law towards other States in respect of the

[298] Buxbaum, "Territory, Territoriality and the Resolution of Jurisdictional Conflict", *AJCL* 2009, Vol. 57, No. 3, p. 642.
[299] Nowak, "Obligations of States to Prevent and Prohibit Torture in an Extraterritorial Perspective" in Gibney and Skogly (eds.), 2010, p. 21.
[300] Ibid., p. 21.
[301] See *S.S. "Lotus"*, Collection of Judgements, Permanent Court of International Justice (Series A. No. 10), 7 September 1927, where France claimed for French jurisdiction to be applied in the case as it occurred on the high seas, but the PCIJ found that France did not have jurisdiction over the incident.
[302] Crawford, 2012, p. 447.
[303] Milanovic, 2011, p. 32.
[304] Ibid., p. 60.
[305] *Island of Palmas case* (Netherlands, USA), United Nations Reports of International Arbitral Awards, 4 April 1928, Vol II, p. 839.

> exercise of its powers in relation to this Territory. Physical control of a territory, and not sovereignty or legitimacy of title, is the basis of State liability for acts affecting other States.[306]

Consequently, the lack of sovereignty or legal title, does not exempt states from respecting human rights.[307] Application of human rights treaties rely upon "actual power exercised over it".[308] A state's capacity to protect, or to violate human rights, within a territory is in other words unbound by sovereignty, but strongly bound to power over territory. Milanovic has argued that:

> […] 'jurisdiction' in various human rights treaties refers to a power that a state exercises over a territory, and perhaps also over individuals. When the state obtains this power it must, with due diligence, fulfil its obligation to secure or ensure the human rights of all persons within its jurisdiction. This power is a question of fact, of actual authority and control.[309]

Therefore, as contracting parties to multiple human rights treaties, state responsibility can be said to impose extraterritorial obligations to protect human rights, as human rights treaties provide this above-mentioned understanding of jurisdiction.

The general bases of jurisdiction are: the principle of territory, the principle of nationality, the principle of passive personality, the principle of protection or security and the effects doctrine or the principle of objective territoriality.[310] These general principles of jurisdiction together with international jurisdiction and universal jurisdiction will be presented in sub-chapters 3.2.3. to 3.2.7..[311]

3.2.2. Prescriptive, Enforcement and Judicial Jurisdiction

Jurisdiction can be classified into three different types of jurisdiction: prescriptive, enforcement and judicial jurisdiction. Prescriptive jurisdiction can also be referred to as legislative jurisdiction, jurisdiction to prescribe or *compétence normative*, whereas enforcement

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[306] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, p. 16, paragraph 118.
[307] Milanovic, 2011, pp. 60-61.
[308] Ibid., pp. 60-61.
[309] Ibid., p. 53.
[310] Crawford, 2012, pp. 456-464, see also Cooreman, 2017, pp. 90-101.
[311] For more information regarding international jurisdiction and universal jurisdiction see Crawford, 2012, pp. 467-471 and Ryngaert, "Universal Jurisdiction in an ICC Era: A Role to Play for EU Member States with the Support of the European Union", *European Journal of Crime, Criminal Law and Criminal Justice* 2006, Vol. 14, No. 1, pp. 46-80.

jurisdiction can be referred to as executive jurisdiction, jurisdiction to enforce or *compétence d'execution* and judicial jurisdiction that can be referred to as adjudicatory jurisdiction, curial or judicial jurisdiction.[312] Prescriptive jurisdiction refers to the power to make laws or to make rules, enforcement jurisdiction refers to the power to enforce the aforementioned laws or rules and judicial jurisdiction refers to the power to decide on matters occurred in the territory (and abroad), hence, to apply these prescribed laws or rules.[313] Adjudicative jurisdiction refers to courts' power to claim jurisdiction over persons.[314] Judicial jurisdiction can be seen as part of prescriptive jurisdiction or as part of enforcement jurisdiction, as well as it can be designated as part of both categories.[315] Judicial jurisdiction can be categorised as prescriptive when the jurisdictional scope of legal acts is interpreted by courts and judicial jurisdiction can be categorised as enforcement jurisdiction when courts give effect to laws.[316] Enforcement jurisdiction is also exercised when a court convicts, punishes and sentences.[317] It is possible for prescriptive jurisdiction to be extraterritorial, whereas jurisdiction to enforce is "strictly territorial".[318]

When exercised extraterritorially, these three different types of jurisdiction can lead to varying levels of intrusiveness.[319] Enforcement jurisdiction exercised outside a state's territory is problematic, if not to say the most problematic according to Cooreman, as enforcement outside one's own territory is "clearly intruding on the sovereign domain of other states" and it violates the three basic principles of rules on state jurisdiction in PIL,[320] namely sovereignty, non-intervention and cooperation.[321] State-run enforcement jurisdiction outside the state's own territory can be practised in different ways as there are several forms of this kind of intrusion, by way of example, investigations of criminal or administrative procedures of another country and physical force by state organs.[322] Prescriptive jurisdiction is not as intrusive as enforcement jurisdiction, as norms governing persons or conduct outside a state's territory can be prescribed by states. Nevertheless, this does not mean extraterritorial prescribing of rules always has an

[312] Cooreman, 2017, p. 85, Milanovic, 2011, p. 23.
[313] Cooreman, 2017, p. 85, Crawford, 2012, p. 456.
[314] Ryngaert, 2015, p. 11.
[315] Cooreman, 2017, pp. 85-86.
[316] Ibid., p. 86.
[317] Ibid., p. 86.
[318] O'Keefe, "Universal Jurisdiction – Clarifying the Basic Concept", *JICJ* 2004, Vol. 2, No. 3, p. 740.
[319] Cooreman, 2017, p. 86.
[320] Ibid., p. 86.
[321] See Crawford, 2012.
[322] Cooreman, 2017, p. 86.

impact on other states, especially so when there is no effort to enforce the rules outside the territory.[323] However, expecting that states wish to carry into effect these kind of prescribed rules, is legitimate.[324] International law can allow for "a state to assert the applicability of its criminal law to given conduct but, because the author of the conduct is abroad" that state cannot enforce its criminal law.[325]

3.2.3. The Principle of Territoriality

When discussing jurisdiction and international law, jurisdiction is closely bound to territory, as states are regarded as having a monopoly of force within their borders.[326] In international law, the territoriality principle is the most basic principle of jurisdiction,[327] and according to Higgins it is to be considered "natural that, within a territory, a state expects its laws to apply".[328] In common law, it has traditionally been viewed that jurisdiction is "inherently territorial".[329] Traditionally, states' exercise of jurisdiction was in general limited to persons, property and acts within the territory of the state.[330] Territory together with government and population "constitute the physical and social base for the state" and this base needs to be physically identified as well as legally delimited.[331] This competence over events and persons (persons = nationals, foreigners, residents, visitors or persons otherwise present in the territory) within a territory can be said to be the starting point for jurisdiction and it is the most usual basis for jurisdiction, as it entails the fact that states can and may, prescribe laws within that said territory.[332] All this, while under the duty not to intervene with any other states' exclusive jurisdiction over their territory.[333] In a situation where a national of a state has conducted a crime and left the territory, all the time while the national is abroad, prescribed rules might be

[323] Ibid., p. 86.
[324] Ibid., p. 87.
[325] O'Keefe, "Universal Jurisdiction – Clarifying the Basic Concept", *JICJ* 2004, Vol. 2, No. 3, p. 740.
[326] Jackson, "Sovereignty-Modern: A New Approach To An Outdated Concept", *AJIL* 2003, Vol. 97, No. 4, p. 782 and p. 786.
[327] Ryngaert, 2015, p. 49.
[328] Higgins, 1994, p. 78.
[329] Hardcastle, "UK: The Long Arm of the Law: Extra-Territoriality and the Serious Crime Act 2007", 3 October 2012, available at: http://www.mondaq.com/uk/x/199404/Crime/The+Long+Arm+Of+The+Law+ExtraTerritoriality+And+The+Serious+Crime+Act+2007
[330] International Bar Association – Legal Practice Division, *Report of the Task Force on Extraterritorial Jurisdiction*, 2009, p. 5.
[331] Crawford, 2012, p. 204.
[332] Cooreman, 2017, p. 91.
[333] Crawford, 2012, p. 447.

limited with no enforcement.[334] Upon return to the home country, however, the national can face enforcement of the prescribed rules and be bound by the laws of his or her home country.[335]

However, overlapping jurisdiction is possible when,[336] to give an example, a national of state A conducts unlawful behaviour in state B and, hence, violates the law within that state B. It is universally recognised that the courts of the state where a crime is committed, state B in the above-mentioned example, may exercise jurisdiction seen as "the essential territoriality of sovereignty" and a result of legal competences that states have.[337] When other states are affected by actions undertaken by state A, international law plays a role and jurisdiction can be limited by international law.[338] State A can use a certain area of state B, without it being unlawful, as long as state A has the consent of state B to have that use of the specific area, or to provide another example, to have its forces stationed within the boundaries of state B and have exclusive jurisdiction over its own forces.[339] Consent by state B is of particular importance; when there is consent by host state B, then state A does not have any claim to sovereignty over parts of state B.[340] Hence, enforcement "always requires the consent of the territorial state" meaning prescribed rules by the exercise of prescriptive jurisdiction does not equal to extraterritorial enforcement.[341] In the commentaries to the Draft articles on the Law of Treaties, the United Nations International Law Commission (ILC) has pointed out in Article 20 that valid consent for a conduct by another state "precludes the wrongfulness of that act in relation to the consenting state".[342]

Jurisdiction can be limited by international treaties and by regional human rights treaties. Article 1 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) contains, a limitation to its jurisdiction.[343] Additionally, Article 1 poses an obligation on its

[334] Cooreman, 2017, p. 93.
[335] Ibid., p. 93.
[336] Milanovic, 2011, p. 25.
[337] Crawford, 2012, p. 458.
[338] Cooreman, 2017, p. 85.
[339] Crawford, 2012, p. 204.
[340] Ibid., p. 204.
[341] Cooreman, 2017, p. 93.
[342] Article 20, Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the International Law Commission, 2001, UN doc. A/56/10.
[343] Article 1, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16, 1950.

state parties to secure the rights contained in the ECHR.[344] In *Bankovic and Others v. Belgium and 16 Other Contracting States*, the European Court of Human Rights (ECtHR) considered the jurisdictional competence of state parties to be "primarily territorial",[345] based on Article 1 of the ECHR and its wording "within their jurisdiction".[346] In *Bankovic*, the wording 'within their jurisdiction' was then further defined and discussed:

> 59. As to the "ordinary meaning" of the relevant term in Article 1 of the Convention, the Court is satisfied that, from the standpoint of public international law, the jurisdictional competence of a State is primarily territorial. While international law does not exclude a State's exercise of jurisdiction extra-territorially, the suggested bases of such jurisdiction (including nationality, flag, diplomatic and consular relations, effect, protection, passive personality and universality) are, as a general rule, defined and limited by the sovereign territorial rights of the other relevant States (Mann, *"The Doctrine of Jurisdiction in International Law*", RdC, 1964, Vol. 1; Mann, "*The Doctrine of Jurisdiction in International Law, Twenty Years Later*", RdC, 1984, Vol. 1; Bernhardt, *Encyclopaedia of Public International Law*, Edition 1997, Vol. 3, pp. 55-59 "*Jurisdiction of States"* and Edition 1995, Vol. 2, pp. 337-343 "*Extra-territorial Effects of Administrative, Judicial and Legislative Acts*"; Oppenheim's *International Law*, 9th Edition 1992 (Jennings and Watts), Vol. 1, § 137; P.M. Dupuy, *Droit International Public*, 4th Edition 1998, p. 61; and Brownlie, *Principles of International Law*, 5th Edition 1998, pp. 287, 301 and 312-314).
>
> 60. Accordingly, for example, a State's competence to exercise jurisdiction over its own nationals abroad is subordinate to that State's and other States' territorial competence (Higgins, *Problems and Process* (1994), at p. 73; and Nguyen Quoc Dinh, *Droit International Public*, 6th Edition 1999 (Daillier and Pellet), p. 500). In addition, a State may not actually exercise jurisdiction on the territory of another without the latter's consent, invitation or acquiescence, unless the former is an occupying State in which case it can be found to exercise jurisdiction in that territory, at least in certain respects (Bernhardt, cited above, Vol. 3 at p. 59 and Vol. 2 at pp. 338-340; Oppenheim, cited above, at § 137; P.M. Dupuy, cited above, at pp. 64-65; Brownlie, cited above, at p. 313; Cassese, *International Law*, 2001, p. 89; and, most recently, the "*Report on the Preferential Treatment of National Minorities by their Kin-States*" adopted by the Venice Commission at its 48th Plenary Meeting, Venice, 19-20 October 2001).
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> 61. The Court is of the view, therefore, that Article 1 of the Convention must be considered to reflect this ordinary and essentially territorial notion of jurisdiction, other bases of jurisdiction being exceptional and requiring special justification in the particular circumstances of each case (see, *mutatis mutandis* and in general, Select Committee of Experts on Extraterritorial Criminal Jurisdiction, European Committee on Crime Problems, Council of Europe, "*Extraterritorial Criminal Jurisdiction*", Report published in 1990, at pp. 8-30).[347]

Thus, the ECtHR was of the view that 'within their jurisdiction', reflects "this ordinary and essentially territorial notion of jurisdiction, other bases of jurisdiction being exceptional and requiring special justification in the particular circumstances of each case".[348] In other words,

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[344] Ibid., Article 1.
[345] *Bankovic and Others v. Belgium and 16 Other Contracting States*, European Court of Human Rights (Application no. 52207/99), Grand Chamber Decision of 12 December 2001, paragraph 59.
[346] Article 1, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16, 1950.
[347] *Bankovic and Others v. Belgium and 16 Other Contracting States*, European Court of Human Rights (Application no. 52207/99), Grand Chamber Decision of 12 December 2001, paragraphs 59-61 (emphasis original).
[348] Ibid., paragraph 61.

the ECtHR was of the opinion that the bombing of a foreign territory was insufficient for an extraterritorial jurisdictional link to be established between the Serbian victims and the North Atlantic Treaty Organization member states.[349] Even though the *Bankovic* case was ruled inadmissible by the ECtHR, the ECtHR "did not say that these countries could carry out human rights violations with impunity outside their territory",[350] and the fact that the ECtHR held that it lacked jurisdiction to hear the *Bankovic* case "the *de facto* result was that there were no Court procedures available for the individuals in the case, where they had been adversely affected by the actions of foreign states".[351] Thus, this procedural limitation of the ECHR resulted in "impunity from legal redress for states".[352]

The International Covenant on Civil and Political Rights (ICCPR) from 1966 contains a jurisdictional clause similar to the one in the ECHR.[353] In the ICCPR it is stated that states are responsible "to respect and to ensure to all individuals within its territory and subject to its jurisdiction" the rights set out in the convention.[354] Article 2(1) of the ICCPR is formulated in a broad manner as 'within its territory' and 'subject to its jurisdiction' are separated by 'and', due to this, these claims are to be interpreted separately.[355] The United Nations Human Rights Committee (UNHRCm) in its General Comment 31 on Article 2, adopted on 26 May 2004, further affirmed that jurisdiction is linked to the effective control and authority exercised by a state also in an extraterritorial setting.[356] Furthermore, this implies the ICCPR is to be applied to persons that are inside the territory of a state or subject to its jurisdiction. This interpretation has also been supported by the ICJ.[357] When comparing the ECHR and the ICCPR to the CAT,

[349] Nowak, "Obligations of States to Prevent and Prohibit Torture in an Extraterritorial Perspective" in Gibney and Skogly (eds.), 2010, p. 12.
[350] Skogly, "Extraterritoriality: universal human rights without universal obligations?" in Joseph and McBeth (eds.), 2011, p. 94.
[351] Ibid., p. 94 (emphasis original).
[352] Ibid., p. 94 and McGregor, "Torture and State Immunity: Deflecting Impunity, Distorting Sovereignty", *The European Journal of International Law* 2008, Vol. 18, No. 5, p. 912: "As such, procedural rules cannot be used to evade substantive obligations, as this would defeat the core basis for jus cogens norms such as the prohibition of torture, by facilitating unlawful derogation".
[353] International Covenant on Civil and Political Rights, 1966.
[354] Article 2(1), International Covenant on Civil and Political Rights, 1966.
[355] Ibid., Article 2(1) and Skogly, "Extraterritoriality: universal human rights without universal obligations?" in Joseph and McBeth (eds.), 2011, pp. 90-93.
[356] UN Human Rights Committee General Comment No. 31: The Nature of the General Legal Obligations Imposed on States Parties to the Covenant (Art. 2), 26 May 2004, UN doc. CCPR/C/21/Rev.1/Add. 13, paragraph 10.
[357] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion 9 July 2004), ICJ Reports 2004, p. 136, paragraphs 106-113 and *Armed Activities on the Territory of the Congo* (Democratic Republic of the Congo v. Uganda), Judgement of 19 December 2005, ICJ Reports 2005, p. 168, paragraphs 216-217.

one can see the link between territory and jurisdiction is most clear in the CAT,[358] as it uses the wording "in any territory under its jurisdiction" in several articles.[359]

3.2.4. The Principles of Subjective and Objective Territoriality

Territoriality can be subjective or objective. Subjective territoriality comprehends that at the time of the conduct the accused perpetrator is present in the territory.[360] Subjective territoriality creates jurisdiction over crimes initiated or started within the state, even when and if completed or consummated in a foreign state.[361] Whereas objective territoriality comprehends referring to the jurisdiction of a state, when the conduct only partially occurred in that state's territory. An illustrative example for this is that of death on the territory of the forum, caused by firing a gun across borders.[362] In other words, objective territorial jurisdiction can be asserted in a situation where a gun is fired in state A, but it causes injury in state B.

The principle of objective territoriality, or the effects doctrine, creates jurisdiction over crimes when "any essential constituent element of a crime is consummated on the forum state's territory".[363] The principle of objective jurisdiction allows for states to exercise jurisdiction when activities originate abroad but "have substantial, direct and foreseeable effects upon or in its national territory".[364] There are, however, other examples as well ,where the principle can be employed to found jurisdiction in a case,[365] cases of conspiracy,[366] cases of immigration law[367] and cases of violations of antitrust,[368] to name a few. It needs to be mentioned here that under the law of the United States of America, claims of territoriality "can be based either on local conduct or on sufficient local effects",[369] and "that effects within the territory of the United

[358] Milanovic, 2011, p. 33.
[359] Articles 2, 5, 11, 12, 13 and 16, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.
[360] Crawford, 2012, p. 458.
[361] Ibid., p. 458.
[362] Ibid., p. 458.
[363] Ibid., p. 458.
[364] Cooreman, 2017, p. 92.
[365] Crawford, 2012, p. 459.
[366] *Board of Trade v. Owen* (AC 602), 29 January 1957, a conspiracy in England to commit an offence abroad is not indictable in England when the unlawful means and ultimate objects are outside the jurisdiction, there are exceptions, however. See also Connor, "Jurisdiction in Cases of Criminal Conspiracy", *JCL* 1976, Vol. XL, No. 160, pp. 281-286.
[367] See for comparison *Naim Molwan v. Attorney General for Palestine* (81 LI L Rep 277), 20 April 1948.
[368] *United States v Aluminium Company of America* (148 F.2d 416 (2nd Cir, 1945)), 12 March 1945.
[369] Buxbaum, "Territory, Territoriality and the Resolution of Jurisdictional Conflict", *AJCL* 2009, Vol. 57, No. 3, p. 639.

States constitute[d] a valid basis of legislative jurisdiction",[370] as the cases mentioned in the examples are by majority cases from the Supreme Court of the United States of America.

In the *SS* "*Lotus*"case, the principle of objective territory gained general support and the principle of objective territorial jurisdiction was the basis for the majority view in the case.[371] Buxbaum has stated that objective territoriality can be invoked when it is needed "to argue that the location of that conduct's effect within a particular country is sufficient to give that country jurisdiction to regulate".[372] In other words, Buxbaum refers to situations when "the government of a nation in which defendant corporations are located […] may invoke the concept of "extraterritoriality" to argue that the regulating country would overstep its authority if it applied its laws to foreign conduct".[373] In prescriptive jurisdiction, the effects doctrine can be invoked when extraterritorial offences cause harmful effects in the prescribing state while not matching the criteria for territorial jurisdiction or when the harmful effect is not "sufficiently vital to the internal or external security of the state in question" in order to pleading of the protective principle to be justified.[374] The effects doctrine is controversial, yet not objectionable in all cases.[375] This doctrine can be said to have grown out from the objective territoriality principle and concerns situations when no "constituent element of the offence takes place within the territory of the prescribing state".[376] In spite of the fact that the effects doctrine can be very controversial in some areas, like in the field of antitrust and competition law, in some other

[370] Ibid., p. 643.
[371] Crawford, 2012, p. 459 and *S.S. "Lotus"*, Collection of Judgements, Permanent Court of International Justice (Series A. No. 10), 7 September 1927, pages: 5, 18, 19, 25. *S.S. "Lotus"*, Collection of Judgements, Permanent Court of International Justice (Series A. No. 10), 7 September 1927, pp. 18-19: "Now the first and foremost restriction imposed by international law upon a State is that-failing the existence of a permissive rule to the contrary-it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention". And *S.S. "Lotus"*, Collection of Judgements, Permanent Court of International Justice (Series A. No. 10), 7 September 1927, p. 19:" It does not, however, follow that international law prohibits a State from exercising jurisdiction in its own territory, in respect of any case which relates to acts which have taken place abroad, and in which it cannot rely on some permissive rule of international law. Such a view would only be tenable if international law contained a general prohibition to States to extend the application of their laws and the jurisdiction of their courts to persons, property and acts 'outside their territory, and if, as an exception to this general prohibition, it allowed States to do so in certain specific cases. But this is certainly not the case under international law as it stands at present. Far from laying down a general prohibition to the effect that States may not extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, it leaves them in this respect a wide measure of discretion which is only limited in certain cases by prohibitive rules […] ."
[372] Buxbaum, "Territory, Territoriality and the Resolution of Jurisdictional Conflict", *AJCL* 2009, Vol. 57, No. 3, p. 635.
[373] Ibid., p. 635.
[374] Crawford, 2012, p. 463.
[375] O'Keefe, "Universal Jurisdiction – Clarifying the Basic Concept", *JICJ* 2004, Vol. 2, No. 3, p. 739.
[376] Ibid., p. 739.

areas extraterritorial prescriptive jurisdiction based on the effects doctrine can be established as uncontroversial in relation to certain offences, like inchoate conspiracies to murder and import of illegal drugs.[377]

When combined, the principle of subjective territoriality and the principle of objective territoriality, in situations of crimes occurring across borders, give the effect of both states having jurisdiction over the case matter.[378] In a situation where a state's conduct effects multiple states, then there is a possibility of rivalling jurisdictions. Multiple jurisdictional competence is common, as there is a lack of "natural regulator",[379] hence, there are no assumptions that persons or even corporations or states will only be regulated once.[380] Naturally, situations where more than only one state wishes to regulate a situation and thus sees the situation under its particular jurisdiction do occur.[381]

3.2.5. The Principle of Nationality

Nationality has generally been recognised as a basis for extraterritorial jurisdiction and it has so been done in various cases.[382] Nationality has been used as evidence of allegiance and as an aspect of sovereignty.[383] The principle of nationality is besides this also referred to as the active personality principle.[384] When claiming for nationality jurisdiction, "it is often asserted that the person over whom the state purports to exercise its prescriptive jurisdiction must have been a national at the time of the offence", [385] in other words, the offender must have been a national at the time when the offence was committed. According to Higgins "the idea of a duty to punish nationals who harm foreigners finds much support".[386] The most problematic aspect of exercising jurisdiction based on the principle of nationality, is to determine and identify "who

[377] Ibid., p. 739 and Crawford, 2012, pp. 462-463.
[378] Crawford, 2012, p. 458.
[379] Ibid., p. 457.
[380] Ibid., p. 457.
[381] Buxbaum, "Territory, Territoriality and the Resolution of Jurisdictional Conflict", *AJCL* 2009, Vol. 57, No. 3, p. 642.
[382] See Ryngaert, 2015 and *S.S. "Lotus"*, Collection of Judgements, Permanent Court of International Justice (Series A. No. 10), 7 September 1927, pp. 22-23: "This being so, the Court does not think it necessary to consider the contention that a State cannot punish offences committed abroad by a foreigner simply by reason of the nationality of the victim. For this contention only relates to the case where the nationality of the victim is the only criterion on which the criminal jurisdiction of the State is based.".
[383] Crawford, 2012, pp. 459-460.
[384] Milanovic, 2011, p. 24.
[385] Crawford, 2012, p. 460.
[386] Higgins, 1994, p. 157.

is a national abroad".[387] Crawford states that nationality is a common basis for jurisdiction,[388] and that in the modern era, the view on relation of nationality provides a "basis for responsibility and protection",[389] not however, completely in the same manner as de Vattel expressed it in the 18th century: " *[q]uiconque maltraite un citoyen offense indirectement l'Etat, qui doit protéger ce citoyen*".[390] According to de Vattel, the link was indirect, as not any harm to a foreigner could be said to constitute an injury to the aliens' state as such.[391] The link of nationality, however, authorises a state to exercise jurisdiction.

3.2.6. The Principle of Passive Personality and the Principle of Protection or Security

According to the somewhat controversial and much criticised general basis of jurisdiction, namely the principle of passive personality or passive nationality, aliens or foreigners "may be punished for acts abroad harmful to nationals of the forum".[392] In other words, exercise of jurisdiction on the basis of the passive personality principle is to exercise jurisdiction on the "basis of harm to a national while abroad",[393] as the principle "recognizes that each state has a legitimate interest in protecting the safety of its citizens when they journey outside national boundaries".[394] By way of example, a national of state A commits an act of crime in state B against a national of state C, and then by use of the passive personality principle state C has jurisdiction in the matter. The passive personality principle concentrates primarily on the effects of the conducted crime rather than territory or nationality.[395] The passive personality principle can be said to have caused more controversy than the principles of nationality or territoriality, as it is perceived as somewhat aggressive.[396] The *S.S.* "*Lotus*" case demonstrated comprehensive exercise of passive personality jurisdiction, as punishment of acts conducted

[387] Ibid., p. 73 (emphasis original).
[388] Crawford, 2012, pp. 459-460.
[389] Ibid., p. 607.
[390] De Vattel, 1758, Livre II, Chapitre VI, Paragraphe 71. An English translation, by Chitty, in *Law of Nations*, 1872, of de Vattels doctrine: "Whoever uses a citizen ill, indirectly offends the state, which is bound to protect this citizen".
[391] De Vattel, 1758, Livre II, Chapitre VI, Paragraphe 71 and Crawford, 2012, p. 607.
[392] Crawford, 2012, p. 461, for more information regarding the principle of passive personality and caselaw, see *S.S. "Lotus"*, Collection of Judgements, Permanent Court of International Justice (Series A. No. 10), 7 September 1927, see also *United States of America v. Fawaz Yunis* (681 F. Supp. 896 (DDC 1988) Case no. 89-3208), 12 February 1988 and *Cutting*, U.S. Department of State (1887 Foreign Relations 751 (1888)).
[393] Higgins, 1994, p. 74.
[394] McCarthy, "The Passive Personality Principle and Its Use in Combatting International Terrorism", *Fordham International Law Journal* 1989, Vol. 13, No. 3, p. 301.
[395] Ibid., p. 301.
[396] Cooreman, 2017, p. 93.

abroad, against persons of Turkish nationality, were provided by the Turkish penal code.[397] Although controversial, the principle of passive personality has still managed to reach a so-called condition of consensus on the use of passive personality, that is, cases much of the time linked to international terrorism.[398] The protective or security principle of jurisdiction is rather open and wide, often invoked by various reasons as almost all states assume jurisdiction for acts conducted abroad which endanger and affect the internal or external security of their state as well as other key interests of states.[399]

3.2.7. The Principle of Universality

Apart from national jurisdiction, international jurisdiction and universal jurisdiction can be distinguished as distinct fields of jurisdiction.[400] According to O'Keefe universal jurisdiction can be defined in the following way:

> universal jurisdiction can be defined as prescriptive jurisdiction over offences committed abroad by persons who, at the time of the commission, are non-resident aliens, where such offences are not deemed to constitute threats to the fundamental interests of the prescribing state or, in appropriate cases, to give rise to effects within its territory.[401]

International jurisdiction is not to be considered as the equivalent of universal jurisdiction, thus, international jurisdiction is "jurisdiction over international crimes as exercised by international tribunals",[402] and universal jurisdiction "is national jurisdiction over international crimes".[403] Universal jurisdiction can, hence, be said to be a form of prescriptive jurisdiction.[404] Crawford has stated that "universal jurisdiction is defined by the character of the crime concerned, rather

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[397] See Crawford, 2012, p. 461 and *S.S. "Lotus"*, Collection of Judgements, Permanent Court of International Justice (Series A. No. 10), 7 September 1927.
[398] See for example *Arrest Warrant* (Democratic Republic of the Congo v. Belgium) (ICJ Reports 2002, p. 3), Judgment of 11 April 2000, Joint Separate Opinion of Judges Higgins, Kooijmans and Buergenthal, pp. 76-77: "The contemporary trends, reflecting international relations as they stand at the beginning of the new century, are striking. The movement is towards bases of jurisdiction other than territoriality. "Effects" or "impact" jurisdiction is embraced both by the United States and, with certain qualifications, by the European Union. Passive personality jurisdiction, for so long regarded as controversial, is now reflected not only in the legislation of various countries […] and today meets with relatively little opposition, at least so far as a particular category of offences is concerned". See also Crawford, 2012, p. 461.
[399] Crawford, 2012, p. 462 and O'Keefe, "Universal Jurisdiction – Clarifying the Basic Concept", *JICJ* 2004, Vol. 2, No. 3, p. 739.
[400] Ryngaert, "Universal Jurisdiction in an ICC Era: A Role to Play for EU Member States with the Support of the European Union", *European Journal of Crime, Criminal Law and Criminal Justice* 2006, Vol. 14, No. 1, p. 47.
[401] O'Keefe, "Universal Jurisdiction – Clarifying the Basic Concept", *JICJ* 2004, Vol. 2, No. 3, p. 745.
[402] Ryngaert, "Universal Jurisdiction in an ICC Era: A Role to Play for EU Member States with the Support of the European Union", *European Journal of Crime, Criminal Law and Criminal Justice* 2006, Vol. 14, No. 1, p. 47.
[403] Ibid., p. 47.
[404] O'Keefe, "Universal Jurisdiction – Clarifying the Basic Concept", *JICJ* 2004, Vol. 2, No. 3, pp. 735-736.

than by the presence of some kind of nexus to the prescribing state".[405] Universal jurisdiction is permitted by international law in regard to certain offences against the international community, in other words, the nature of the act committed authorises a state to exercise its jurisdiction and to apply its laws regardless of the fact that the act has occurred outside its territory, even though the act has been conducted by a non-national and no national(s) were harmed by the act.[406] Crimes subject to universal jurisdiction in contemporary times are particularly heinous crimes that might pose a threat to international peace and order,[407] the so-called "core crimes" of CIL,[408] namely genocide,[409] crimes against humanity, war crimes, and especially grave breaches of the Hague Conventions of 1907 and of the Geneva Conventions of 1949.[410] Another crime likely to being subject to universal jurisdiction is torture within the meaning of the CAT of 1984.[411] The ICC has a special role when concerning both universal and international jurisdiction, in some cases "[t]he ICC might urge States to refrain from exercising universal jurisdiction in cases that national courts are unable to adequately prosecute and that the ICC is purportedly better placed to address".[412] Simultaneously, the ICC as an institution, has power when it comes to "matters of enforcement of international humanitarian law".[413] However, the ICC may not always have jurisdiction, in cases occurred before the entry into force of the ICC Statute (1st of July 2002),[414] as well as crimes committed outside the territory of any ICC member state nor committed by a national of the ICC state parties, consequently, states exercise jurisdiction over such IHL crimes.[415] The ICC may only exercise jurisdiction on the basis of the principles of territory and nationality, consequently the ICC may not exercise jurisdiction based on the principle of passive personality.[416]A strong *prima facie*

[405] Crawford, 2012, p. 467.
[406] Higgins, 1994, pp. 56-57.
[407] Cooreman, 2017, p. 95.
[408] Ryngaert, 2015.
[409] Schabas, "National Courts Finally Begin to Prosecute Genocide, the 'Crime of Crimes'", *JICJ* 2003, Vol. 1, No. 1, pp. 39-63.
[410] Higgins, 1994.
[411] Cassese, 2008 and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.
[412] Ryngaert, "Universal Jurisdiction in an ICC Era: A Role to Play for EU Member States with the Support of the European Union", *European Journal of Crime, Criminal Law and Criminal Justice* 2006, Vol. 14, No. 1, p. 51.
[413] Ibid., p. 51: "National courts of States Parties to the Rome Statute should accept that the ICC has henceforth the last word in matters of enforcement of international humanitarian law".
[414] Rome Statute of the International Criminal Court, 1998.
[415] Ryngaert, "Universal Jurisdiction in an ICC Era: A Role to Play for EU Member States with the Support of the European Union", *European Journal of Crime, Criminal Law and Criminal Justice* 2006, Vol. 14, No. 1, p. 78.
[416] Article 12, Rome Statute of the International Criminal Court, 1998.

case for exercise of universal jurisdiction by a particular state can be motivated when "a person suspected of having committed an international crime is found in the territory" of that state.[417]

The principle of *aut dedere aut judicare* is present in various international treaties concerning international crimes,[418] this principle contains the requirement of states to "prosecute the alleged offender who is present in their own territory" or if the perpetrator is not prosecuted, the perpetrator should be extradited.[419] The mention of the principle of *aut dedere aut judicare* in international conventions and treaties confirms the international opinion that states themselves are enough equipped to address international crimes in an adequate manner, via universal jurisdiction, when and if the supposed offender can be found in the territory of a state.[420] The principle of *aut dedere aut judicare* only applies to individuals and only when the perpetrator is present in the territory of the state that is exercising universal jurisdiction.[421] When it comes to the core crimes of human rights, universal jurisdiction can be applied according to CIL.[422] Universal jurisdiction *in absentia* is nevertheless controversial and it might give rise to situations of conflict "as *any* State is entitled to assert its jurisdiction".[423] Hence, it is most times of no use for states to initiate investigations and prosecutions *in absentia*,

[417] Ryngaert, "Universal Jurisdiction in an ICC Era: A Role to Play for EU Member States with the Support of the European Union", *European Journal of Crime, Criminal Law and Criminal Justice* 2006, Vol. 14, No. 1, p. 52.
[418] Extract from Articles 49, 50, 129 and 146 of the four Geneva Conventions, 1949: "Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case". Article 7, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984; Article 5 of the International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973; Article 4 of the Convention for the Suppression of Unlawful Seizure of Aircraft, 1970; Article 5 of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971; Article 3 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents, 1973; and Article 5 of the International Convention against the Taking of Hostages, 1979 as well as Article 49 of the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949; Article 50 of the Convention for the Amelioration of the Condition of Wounded, Sick and shipwrecked Members of Armed Forces at Sea, 1949; Article 126 of the Convention relative to the Treatment of Prisoners of War, 1949; Article 146 of the Convention relative to the Protection of Civilian Persons in Time of War, 1949; and Article 85(1) of the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1977.
[419] Ryngaert, "Universal Jurisdiction in an ICC Era: A Role to Play for EU Member States with the Support of the European Union", *European Journal of Crime, Criminal Law and Criminal Justice* 2006, Vol. 14, No. 1, p. 52.
[420] Ibid., p. 53, see also p. 57.
[421] Ascensio, *Extraterritoriality as an instrument*, 2010, p. 3.
[422] Ibid., p. 3.
[423] Ryngaert, "Universal Jurisdiction in an ICC Era: A Role to Play for EU Member States with the Support of the European Union", *European Journal of Crime, Criminal Law and Criminal Justice* 2006, Vol. 14, No. 1, p. 54.

especially so, when strong evidence of an extradition of the alleged offender are lacking and an extradition seems nowhere being near even an eventual possibility.[424]

3.3. Jurisdiction of Responsibility to Protect and Protection of Civilians

3.3.1. Similarities and Differences of Responsibility to Protect and Protection of Civilians

For the purpose of the subject of this thesis, that is, extraterritorial responsibility to protect civilians, this chapter examines the similarities and differences of R2P and POC, in order to distinguish where these two principles coincide. As mentioned in Chapter 2, R2P and POC contain several similarities and mutual purposes. The two norms of international protection overlap but are still separate principles.[425]

In general, R2P is considered more controversial than POC, mainly because R2P is quite new a concept of international law compared to POC. Historically, POC as a concept is older than the principle of R2P, POC being codified and universalised already in the 1949 GCIV, whereas R2P as a concept was introduced in 2001.[426] Additionally, military intervention causes debate and is often experienced as highly questionable.[427] There is a close relationship between the two principles, both principles originate from the same moral of common humanity,[428] and they both "share the same concern – civilian suffering from mass human-induced violence".[429] Both R2P and POC rely on international policy and both principles demand for intervention.[430] Scope and applicability are, however, different for the two principles.[431] The legal sources for R2P and POC share both similarities and differences. For R2P all four Geneva Conventions and their Additional Protocols are of relevance as the scope of R2P concerns the threat of war crimes, also war crimes in intra-state armed conflicts, whereas for POC it is specifically the

[424] Ibid., p. 56.
[425] See Popovski, "The Concepts of Responsibility to Protect and Protection of Civilians: 'Sisters, but not Twins'", *Security Challenges* 2011, Vol. 7, No. 4, pp. 1-12.
[426] See Convention relative to the Protection of Civilian Persons in Time of War, 1949 and Report of the International Commission of Intervention and State Sovereignty, *The Responsibility to Protect*, 2001.
[427] Breakey and Francis, "Points of Convergence and Divergence: Normative, Institutional and Operational Relationships between R2P and PoC", *Security Challenges* 2011, Vol. 7, No. 4, p. 41.
[428] Ibid., p. 41.
[429] Popovski, "The Concepts of Responsibility to Protect and Protection of Civilians: 'Sisters, but not Twins'", *Security Challenges* 2011, Vol. 7, No. 4, p. 1.
[430] Ibid., p. 1.
[431] Ibid., p. 4.

GCIV which is of relevance.[432] R2P covers ethnic cleansing and genocide, hence, international human rights law (IHRL) concerning non-discrimination of ethnic minorities and the 1948 Genocide Convention are relevant for R2P.[433] POC covers protection of children and therefore the CRC and IHRL regarding prohibition of recruitment of children in armed forces may be relevant for POC.[434]

Where POC requires a situation of armed conflict, R2P can be yielded also in a situation that is not *per se* an armed conflict as both state failure or insurgency can be the situation at hand that yields R2P.[435] In other words, R2P "centres not on war, but on atrocity".[436] Additionally, inter-state armed conflict and intra-state armed conflict can yield R2P.[437] Overall, POC can be interpreted as broader,[438] to give an example, by including protecting civilians also in post-conflict situations.[439] R2P contains the state obligation to protect the people within a state's jurisdiction against the crime of genocide, war crimes, crimes against humanity and ethnic cleansing. Therefore, when a state fails to protect its people from these crimes, the international community is to step in and protect. Situations of serious mass atrocities is when R2P is applied, hence R2P renounces from covering other human rights violations, not to mention suffering from natural disasters. When a state is deliberately unwilling to protect within its jurisdiction, ignoring the suffering caused by a natural disaster and in this way prolonging and increasing the suffering for its population, then application of R2P might be triggered.[440] Nevertheless, within the frames of this example, of suffering initially caused by natural disaster and ignored

[432] Wounded and sick combatants (GCI); shipwrecked combatants (GCII); prisoners of war (GCIII); civilians and POC (GCIV); broadened protection of civilians and limitations of the means and methods of war (API); civilians and civilian objects in NIAC (APII).
[433] Convention on the Prevention and Punishment of the Crime of Genocide, 1948.
[434] Convention on the Rights of the Child, 1989.
[435] Report of the International Commission of Intervention and State Sovereignty, *The Responsibility to Protect*, 2001, Basic Principle B), p. xi.
[436] Breakey and Francis, "Points of Convergence and Divergence: Normative, Institutional and Operational Relationships between R2P and PoC", *Security Challenges* 2011, Vol. 7, No. 4, p. 43.
[437] Report of the International Commission of Intervention and State Sovereignty, *The Responsibility to Protect*, 2001, Basic Principles A) and B); World Summit Outcome Document, 24 October 2005, UN doc. A/RES/60/1, paragraphs 138 and 139, see footnote 68 of this thesis.
[438] Breakey and Francis, "Points of Convergence and Divergence: Normative, Institutional and Operational Relationships between R2P and PoC", *Security Challenges* 2011, Vol. 7, No. 4, p. 41.
[439] Popovski, "The Concepts of Responsibility to Protect and Protection of Civilians: 'Sisters, but not Twins'", *Security Challenges* 2011, Vol. 7, No. 4, p. 2.
[440] See *Cyclone Nargis and the Responsibility to Protect – Myanmar/Burma Briefing No. 2*, Asia-Pacific Centre for the Responsibility to Protect, 2008.

by the state and where there is a lack of evidence of a crime against humanity, application of R2P is out of reach and other mechanisms of humanitarian assistance are to be applied.[441]

R2P is only applicable to situations of mass atrocity crimes, namely genocide, war crimes, ethnic cleansing and crimes against humanity.[442] Whereas POC can be applied to a spectrum of violations of human rights during armed conflict and to post-conflict situations. R2P can, thus, have a narrower scope of applicability than POC and preventive measures of R2P ought to be "specified to address particular atrocity crimes".[443] This, however, is subject to both debate and discussion as in other situations the scope of POC can be narrower than the scope of R2P. By way of example, the scope of POC is narrower than R2P when regarding war crimes; all war crimes are not committed against civilians and as such those war crimes not committed against civilians fall outside the scope of POC, but within the scope of R2P. R2P is applicable to all war crimes, whereas POC, is inapplicable to all war crimes. When a war crime is committed against anyone but a civilian, by way of example, prisoners of war, it would fall outside the applicability of POC but within the applicability of R2P. The scope of R2P is narrower than POC when regarding armed conflicts; R2P is applicable only in armed conflicts "in which mass atrocities have been systematically planned and committed" whereas POC is applicable to every armed conflict.[444]

Crimes against humanity, when committed during armed conflict and war crimes committed against civilians fall within the scope of both R2P and POC.[445] On the one hand, crimes against humanity or ethnic cleansing that is lacking any link to an armed conflict, falls outside the scope of POC but, within the scope of R2P. On the other hand, a situation which, for example, would engage R2P but not POC is when there is "protection of civilians threatened from escalating armed conflict" and neither mass atrocities are planned nor committed as part of that armed conflict.[446]

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[441] Popovski, "The Concepts of Responsibility to Protect and Protection of Civilians: 'Sisters, but not Twins'", *Security Challenges* 2011, Vol. 7, No. 4, pp. 3-4.
[442] World Summit Outcome Document, 24 October 2005, UN doc. A/RES/60/1, paragraphs 138 and 139, see footnote 68 of this thesis.
[443] Popovski, "The Concepts of Responsibility to Protect and Protection of Civilians: 'Sisters, but not Twins'", *Security Challenges* 2011, Vol. 7, No. 4, p. 4.
[444] Ibid., p. 4.
[445] Ibid., p. 4.
[446] Ibid., p. 4.

The two doctrines functioned as parallels when concerning the situation in Libya in 2011. The UNSC Resolution 1970, adopted on 26 February 2011, regarding Libya, established that the violations against the Libyan civilian population "may amount to crimes against humanity" and established the applicability of R2P.[447] Then, when the sanctions imposed against Libya were unsuccessful in halting the violence against the civilian population, Resolution 1973 was passed by the UNSC and adopted on the 17 March 2011.[448] The UNSC Resolution 1973 repeated the responsibility of Libya to protect its own population and it activated the POC.[449] In this situation all three pillars of R2P were met; failure to protect its population by evidence of state-engaged activity in mass atrocities against its own population (Pillar 1), failure of measures by peaceful means to restrain additional violations against the civilian population (Pillar 2) and international preparedness to act via the UNSC and Chapter VII of the UN Charter (Pillar 3).[450]

Large-scale, deliberate and systematic violations posed against civilians constitute the core concern of the R2P doctrine, as well as of the principle of POC. Practice has evinced that when there is a situation of immediate threat of atrocity crimes, then R2P is distinct as an initiative for direct military action as a last resort, whereas POC permits direct application of military action "against the military targets of the regime".[451] POC "requires a fundamentally integrated approach" where the relation between diplomacy, defence and development is different than the traditional one.[452]

R2P and POC have a similar base for sharing of responsibilities. Both principles emphasise the same view on primary responsibility of the state; both principles accentuate that the sovereign state is the one with the primary responsibility to maintain and protect civilian life within the

[447] Breakey and Francis, "Points of Convergence and Divergence: Normative, Institutional and Operational Relationships between R2P and PoC", *Security Challenges* 2011, Vol. 7, No. 4, p. 40, Resolution 1970, adopted by the Security Council, 26 February 2011, UN doc. S/RES/1970.
[448] Resolution 1973, adopted by the Security Council, 17 March 2011, UN doc. S/RES/1973.
[449] Resolution 1973, adopted by the Security Council, 17 March 2011, UN doc. S/RES/1973. Breakey and Francis, "Points of Convergence and Divergence: Normative, Institutional and Operational Relationships between R2P and PoC", *Security Challenges* 2011, Vol. 7, No. 4, p. 40.
[450] Breakey and Francis, "Points of Convergence and Divergence: Normative, Institutional and Operational Relationships between R2P and PoC", *Security Challenges* 2011, Vol. 7, No. 4, p. 40.
[451] Ibid., p. 48.
[452] Smith, Whalan and Thomson, "The Protection of Civilians in UN Peacekeeping Operations: Recent Developments", *Security Challenges* 2011, Vol. 7, No. 4, p. 30.

jurisdiction.[453] R2P consists of three pillars of protection whereas POC consists of four main forms or pillars, namely combatant POC, humanitarian POC, peacekeeping POC and Security Council POC.[454]

3.3.2. Criteria for Extraterritorial Jurisdiction

All exercise of jurisdiction that is not based on the principle of territoriality can then be stated to be extraterritorial jurisdiction.[455] Extraterritorial jurisdiction can be interpreted as jurisdiction "not *exclusively* territorial".[456] However, the concept of extraterritorial jurisdiction is confusing to some extent; the jurisdiction exercised is not fully extraterritorial as jurisdiction is asserted to courts of a given state which are found within a given territory.[457]

To an increasing amount, jurisdiction is exercised extraterritorially, in cases when the subject in question so requires.[458] The increased amount of exercise of extraterritorial jurisdiction has not, however, diminished the controversies coupled with it.[459] Each time unlawful acts occur abroad does not automatically mean application of domestic law by courts, even though courts possess the possibility to apply domestic law to the matter.[460] Solid justification and a proper relation that connects the legitimate actual state of affairs with the jurisdiction that is to be applied are prerequisites for exercise of extraterritorial jurisdiction according to Zalucki.[461] Two constituent components further need to be fulfilled for reasonable relation to be established: "a close relation between a state exercising jurisdiction (intending to do so) and the

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[453] Sampford, "A Feuerbachian Inversion: From Sovereign Rights and Subjects Duties to Citizen Rights and State Duties", *Security Challenges* 2011, Vol. 7, No. 4, p. 52.
[454] Ibid., p. 56.
[455] Higgins, 1994, p.73: "To take a simple example, should an Islamic country wish its citizens to remain subject to the prohibition on alcohol while abroad (even though they may lawfully drink under the laws of the country they are visiting), it is at liberty to draw up its legislation in these terms and, if it wishes, bring deviant citizens to trial upon their return home. But it would not be acceptable for the authorities of that country to endeavor to enforce its law upon its own citizens within the territory of that other jurisdiction where they are residing."
[456] Ryngaert, 2015, p. 8 (emphasis original).
[457] See *Arrest Warrant* (Democratic Republic of the Congo v. Belgium) (ICJ Reports 2002, p. 3), Judgment of 11 April 2000, in the separate opinion of Judges Higgins, Kooijmans and Buergenthal, the three judges believed it to be more accurate to use the term "territorial jurisdiction over persons for extraterritorial events". Paragraph 42 of the ICJ, Joint Separate Opinion of Judges Higgins, Kooijmans and Buergenthal and see also Ryngaert, 2015, pp. 7-8.
[458] See Ryngaert, 2015 and Cooreman, 2017, p. 85.
[459] International Bar Association – Legal Practice Division, *Report of the Task Force on Extraterritorial Jurisdiction*, 2009, p. 5.
[460] Cooreman, 2017, p. 86.
[461] Zalucki, "Extraterritorial Jurisdiction in International Law", *International Community Law Review*, 2015, Vol. 17, No. 4-5, p. 403, pp. 409-410.

actual state of affairs it is to be applied to" and a clear interest carried out in good faith in order for the reasonable relation to be accepted by international law.[462] When examining extraterritorial jurisdiction to protect, it can be difficult to argue for, or apply the reasonable relation, as the motive to protect is often perceived as universal or vague.

Globalisation concerning banking and stock exchanges, technological development and the growth of multinational corporations as well as the ease of doing business across borders has led to both globalising crimes and globalising the counter-activity to reduce violations of international law.[463] It might actually be questioned whether territoriality as a basis for jurisdiction would not be abandoned when faced to the complexity of global transactions.[464] Nevertheless, as Buxbaum has pointed out, other approaches placing other than the principle of territoriality at the centre, may likewise lead to international conflict.[465] In the 21st century when the world itself is a global unity, where individuals can travel across borders without difficulty and companies and businesses function on a multinational basis, transnational criminal activities have consequently led to states exercising extraterritorial jurisdiction to an ever-increasing amount.[466]

Under the scheme of CIL, the principle of territoriality is regarded as the basic principle of jurisdiction.[467] Nevertheless, national laws can be given extraterritorial application when those can be justified by one of the recognised principles of extraterritorial jurisdiction under PIL, namely: the principle of active personality, the principle of passive personality, the principle of protection or security and the principle of universal jurisdiction.[468] When states wish to exercise extraterritorial jurisdiction by application or enforcement of national laws extraterritorially, two main questions arise, when may and when should a state have the possibility to regulate acts

[462] Ibid., pp. 409-410.
[463] International Bar Association – Legal Practice Division, *Report of the Task Force on Extraterritorial Jurisdiction*, 2009, p. 5.
[464] Buxbaum, "Territory, Territoriality and the Resolution of Jurisdictional Conflict", *AJCL* 2009, Vol. 57, No. 3, pp. 632-635. Proposal to abandon territoriality are grounded on "the lack of functionality of territory-based jurisdictional theories in today's economy" at p. 633, and in particular referring to Berman, "The Globalization of Jurisdiction", *University of Pennsylvania Law Review* 2002, Vol. 151, No. 2, p. 322.
[465] Buxbaum, "Territory, Territoriality and the Resolution of Jurisdictional Conflict", *AJCL* 2009, Vol. 57, No. 3, p. 666: "The more unlinked the sphere of regulatory authority is to geographical territory, however, the greater the possibility of discord among neighbours".
[466] International Bar Association – Legal Practice Division, *Report of the Task Force on Extraterritorial Jurisdiction*, 2009, p. 5.
[467] Ryngaert, 2015, p. 101.
[468] Ibid., p. 101.

occurring outside its national territory and how should overlapping jurisdiction between two or more states be solved and settled.[469] There are various bases for extraterritorial jurisdiction under international law: territory, effects and nationality.[470] Although, from a traditional point of view territoriality has been viewed as the primary basis for jurisdiction.[471] There are, however, conflicts within the discourse of extraterritorial and territorial jurisdiction and hence the legal framework is differing and quite so state-bound, as the view on legislative jurisdiction, when discussing extraterritorial and territorial jurisdiction, is different from state to state.[472] In general, it can be said that continental European states are more prone to exercise extraterritorial jurisdiction than common law countries, as common law countries have a tendency to focus its' emphasis on the principle of territoriality.[473] The majority of continental European criminal codes are contributed by provisions of classical principles of criminal jurisdiction and include features of geographical provisions of the scope of application of domestic criminal laws.[474] In general these criminal codes commonly state domestic criminal law to be applicable to all offenses committed within the territory of the state.[475] *Ratione loci* scope of application of domestic laws attests to the important role of extraterritorial jurisdiction, that continental European states "have reserved for extraterritorial criminal jurisdiction" by features of general provisions in their criminal codes.[476] Whereas criminal codes in common law countries, do not feature introductory provisions on jurisdiction, thus only allowing extraterritorial jurisdiction for specific offences, which might "be explained by the high premium that these countries put on the territoriality principle".[477] Nevertheless, the practices of extraterritorial jurisdiction in continental Europe and in common law countries has "witnessed a convergence of practises".[478]

[469] International Bar Association – Legal Practice Division, *Report of the Task Force on Extraterritorial Jurisdiction*, 2009, p. 6.
[470] Crawford, 2012, pp. 456-526.
[471] Ibid., pp. 456-526.
[472] Buxbaum, "Territory, Territoriality and the Resolution of Jurisdictional Conflict", *AJCL* 2009, Vol. 57, No. 3, p. 669.
[473] Ryngaert, 2015, p. 101.
[474] Ibid., p. 101.
[475] To give a few examples: Article 113-2 of the French *Code Pénal:* "La loi pénale française est applicable aux infractions commises sur le territoire de la République"; Articles 3 and 4 of the Belgian *Code Pénal*, Article 3:"L'infraction commise sur le territoire du royaume, par des Belges ou par des étrangers, est punie conformément aux dispositions des lois belges" and Article 4:"L'infraction commise hors du territoire du royaume, par des Belges ou par des étrangers, n'est punie, en Belgique, que dans les cas déterminés par la loi."
[476] Ryngaert, 2015, p. 102.
[477] Ibid., p. 102.
[478] Ibid., p. 104.

When it comes to extraterritorial jurisdictional links, there are varying examples. In its *Cyprus v. Turkey*[479] and *Loizidou v. Turkey*[480] judgements, the ECtHR consented that as Turkey exercised "effective control" of the so-called Turkish Republic of Northern Cyprus,[481] that is, an area outside the national territory of Turkey, the obligation set forth in Article 1 of the ECHR applied also to the so-called Turkish Republic of Northern Cyprus and that an extraterritorial jurisdictional link could be established based on the principle of territory.[482] The ECtHR established that Turkey exercised effective control, and therefore borne the positive state obligation to prevent violations of human rights.[483] In a similar way, in the case of *Ilascu and Others v. Moldova and Russia* the ECtHR found there to be an extraterritorial jurisdictional link between the Russian Federation and the territory of the Moldavian Republic of Transdniestria as Russian authorities provided military, economic and political support.[484] Consequently, the ECtHR concluded that the extraterritorial territory of the Moldavian Republic of Transdniestria was under the effective control of the Russian Federation and hence Russia was held responsible for the acts of violation.[485] In *Öcalan v. Turkey*[486] the ECtHR accepted that extraterritorial detention or arrest of a person by state agents, falls within the jurisdiction of that arresting state, as the person is set under the effective authority and control of that state via the arresting state agents.[487] Thus, when the applicant was handed over to Turkish state officials, by Kenyan state officials, the applicant was under the effective authority of Turkey and thus within Turkish jurisdiction.[488] 'Effective control' and 'effective overall

[479] *Cyprus v. Turkey*, European Court of Human Rights (Application no. 25781/94), Grand Chamber Judgement of 10 May 2001.
[480] *Loizidou v. Turkey*, European Court of Human Rights (Application no. 15318/89), Merits, Judgement of 18 December 1996.
[481] Ibid., paragraph 62.
[482] Ibid., paragraphs 52, 56 and 62. See especially paragraph 52: "[…] that under its established case-law the concept of "jurisdiction" under Article 1 of the Convention (art. 1) is not restricted to the national territory of the Contracting States. Accordingly, the responsibility of Contracting States can be involved by acts and omissions of their authorities which produce effects outside their own territory. Of particular significance to the present case the Court held, in conformity with the relevant principles of international law governing State responsibility, that the responsibility of a Contracting Party could also arise when as a consequence of military action - whether lawful or unlawful - it exercises effective control of an area outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention, derives from the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration".
[483] *Loizidou v. Turkey*, European Court of Human Rights (Application no. 15318/89), Merits, Judgement of 18 December 1996, paragraph 62. Milanovic, 2011, p. 47.
[484] *Ilascu and Others v. Moldova and Russia*, European Court of Human Rights Grand Chamber Decision of 8 July 2004 (Application no. 48787/99), paragraphs 3, 137-161.
[485] Ibid., paragraphs 310-321.
[486] *Öcalan v. Turkey*, European Court of Human Rights (Application no. 46221/99), Judgement of 12 May 2005.
[487] Nowak, "Obligations of States to Prevent and Prohibit Torture in an Extraterritorial Perspective" in Gibney and Skogly (eds.), 2010, p. 13.
[488] *Öcalan v. Turkey*, European Court of Human Rights (Application no. 46221/99), Judgement of 12 May 2005, paragraph 91.

control' as interpreted in the *Loizidou v. Turkey*[489] judgement are, thus, terminals for determining state jurisdiction over a territory.[490]

In *Issa and Others v. Turkey*,[491] the ECtHR further affirmed that extraterritorial military action does not necessary always constitute a link of extraterritorial jurisdiction.[492] This case concerned a complaint of an "alleged unlawful arrest, detention, ill-treatment and subsequent killing" of seven Iraqi nationals during "a military operation conducted by the Turkish army in northern Iraq in April 1995".[493] The application was brought both on the own behalf of the applicants and on the behalf of the deceased relatives of the applicants.[494] A state can be held accountable for violations conducted by its state agents operating outside the national territory, as the violated person is put under the authority and control of the violating state.[495] In *Issa and Others v. Turkey* the ECtHR, though, held that "the applicants' relatives did not come within the jurisdiction of the respondent State within the meaning of Article 1" of the ECHR and hence the jurisdictional link was stated absent.[496]

Under IHRL, extraterritoriality refers to constant respect of and protection of human rights, in all actions and everywhere not only within the territory but also outside the territory of a state and within the jurisdiction of the state.[497] In an imagined situation, where a national of state A commits an act of crime aboard an aircraft registered in state B against a citizen of state C, all this when in the airspace of state D, all four states A, B, C and D may have jurisdiction.[498] States A, B, C and D may have jurisdiction based on the principle of territoriality, the principle of active personality or nationality, or the principle of passive personality.[499] Furthermore, if the crime is of an international character that gives rise to universal jurisdiction, then every state

[489] *Loizidou v. Turkey*, European Court of Human Rights (Application no. 15318/89), Merits, Judgement of 18 December 1996.
[490] Milanovic, 2011, p. 53.
[491] *Issa and Others v. Turkey*, European Court of Human Rights (Application no. 31821/96), Judgement of 16 November 2004.
[492] Ibid., paragraphs 55 and 65-82.
[493] Ibid., paragraph 4.
[494] Ibid., paragraphs 1 and 10.
[495] Nowak, "Obligations of States to Prevent and Prohibit Torture in an Extraterritorial Perspective" in Gibney and Skogly (eds.), 2010, p. 13.
[496] *Issa and Others v. Turkey*, European Court of Human Rights (Application no. 31821/96), Judgement of 16 November 2004, paragraph 82.
[497] Cooreman, 2017, p. 110.
[498] Nowak, "Obligations of States to Prevent and Prohibit Torture in an Extraterritorial Perspective" in Gibney and Skogly (eds.), 2010, p. 21.
[499] Ibid., p. 21.

can have jurisdiction over the subject, no matter the lack of a nexus with the crime.[500] By way of example, in a world of global economy, economic law, devious business practices and fraudulent securities transactions may cause and produce effects that are worldwide, and thereby cause effects-based jurisdiction to be exercised by several states.[501] When states act against the principles of human rights, violating its own population, then the international community also has a responsibility to protect the civilian population according to the principle of R2P.

Jurisdiction is one of the most controversial subjects when regarding extraterritorial state duties, as it is crucial to determine who is entitled to exercise jurisdiction, i.e. which state is entitled to exercise its domestic jurisdiction.[502] Often it is impossible to determine where domestic jurisdiction ends and where a foreign state's jurisdiction commences, this adds to the controversy of the concept of jurisdiction.[503] As seen in Chapter 3, regarding jurisdiction, territory has been seen as the primary base for jurisdiction, and to some extent, it still is. Whereas, when it comes to state obligations concerning human rights, the focus would need to be on jurisdiction as the control over persons suffering from foreign state activity, rather than on the narrow interpretation of jurisdiction as a synonym for territory.[504]

Overall, one can say there are several bases for exercising extraterritorial jurisdiction, the principle of territoriality being the most traditional and the one the most often relied upon. The grounds for exercising extraterritorial jurisdiction need to be grounded, either via a territorial link, nationality, or there needs to be a sufficient nexus and meaningful connection between the act conducted and the foundations for extraterritorial jurisdiction.[505] According to Crawford the cardinal principle in determining which state has jurisdiction over a question, is about finding a genuine connection between the subject-matter of jurisdiction and the territorial base or reasonable interests of the state in question.[506]

[500] Ryngaert, 2015, p. 142.
[501] Ibid., p. 142.
[502] Skogly and Gibney, "Introduction" in Gibney and Skogly (eds.), 2010, p. 4.
[503] Ibid., p. 4.
[504] Ibid., p. 4.
[505] Cooreman, 2017, p. 91.
[506] Crawford, 2012, p. 457.

3.3.3. Respect of State Sovereignty and Exercise of Extraterritorial Jurisdiction

Sovereignty and jurisdiction walk side by side, jurisdiction by a state is entitled by its sovereignty.[507] Under international law, the main actors are sovereign states, whereas uniform legal personality and sovereignty grant states to be equal in legal terms, under the law of nations,[508] *par in parem non habet imperium*.[509] States possess the highest power inside their territory, as states possess exclusive jurisdiction over both their territory and their population.[510] Human rights violations caused by objects subject to a foreign jurisdiction might cause conflict as extraterritorial exercise of national state jurisdiction nevertheless has effects on the local state. Often states refrain from exercising extraterritorial jurisdiction as exercise of extraterritorial jurisdiction is perceived as intervention and in general, states are to avoid interfering in other states internal affairs.[511] Extraterritorial intervention can cause worsened international relations and it is often perceived as lack of respect for sovereignty. Hence, one can say that "extraterritorial exercise of force inside another state infringes that state's jurisdictional monopoly of force within its borders" by the concept of sovereignty,[512] as sovereignty is most often interpreted as implying "a right against interference or intervention by any foreign (or international) power".[513]

According to the principle of non-intervention, states are prohibited from intervening in domestic affairs of other states.[514] In order to intervene lawfully outside its own jurisdiction and on another states' territory, a state needs to have the consent of that other state.[515] There are,

[507] *S.S. "Lotus"*, Collection of Judgements, Permanent Court of International Justice (Series A. No. 10), 7 September 1927, p. 19: "In these circumstances, all that can be required of a State is that it should not overstep the limits which international law places upon its jurisdiction; within these limits, its title to exercise jurisdiction rests in its sovereignty."
[508] Cooreman, 2017, pp. 84-85.
[509] Higgins, 1994, pp. 78-79.
[510] Crawford, 2012, p. 456 and Cooreman, 2017, pp. 84-85.
[511] Article 2(4), Charter of the United Nations, 1945.
[512] Colangelo, "What Is Extraterritorial Jurisdiction", *Cornell Law Review* 2014, Vol. 99, No. 6, p. 1311.
[513] Jackson, "Sovereignty-Modern: A New Approach To An Outdated Concept", *AJIL* 2003, Vol. 97, No. 4, p. 782.
[514] The principle of non-intervention was primarily developed in a military context: the principle restrained states from using force on the territory of another state. See the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, UNGA Resolution 2625 (XXV), 24 October 1970, UN doc. A/RES/2625 (A/8082), p. 123: "No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law."
[515] Crawford, 2012, p. 447: "In practice the sovereignty of most states is sullied by consent – e.g. the consent of UN member states that are not permanent members of the Security Council to be bound by the Council's

however, questions where this exclusivity of jurisdiction owing to state sovereignty, is not granted to states. Treaty law renounces exclusive state jurisdiction, with the consent of states, whereas *jus cogens* norms renounces exclusive state jurisdiction without state consent.[516] Extraterritorial jurisdiction is increasingly exercised, although, states tend to hesitate to exercise extraterritorial jurisdiction. The unwillingness to address extraterritorial issues could to some extent be seen as limiting the states exertion to protect human rights. In a situation where pillar three conditions of R2P are met, or in a situation of armed conflict and POC, then international intervention becomes an international responsibility.

resolutions. The principle of consent has retained practical content more in some fields than in others, and more in certain formal settings – e.g. the jurisdiction of the ICJ […]."

[516] Crawford, 2012, pp. 448-449.

4. Extraterritorial Responsibility to Protect Civilians in a Situation of Armed Conflict

4.1. Extraterritorial Protection of Human Rights

4.1.1. Extraterritorial Application

This chapter focuses on extraterritorial responsibility of states to protect civilians in a situation of armed conflict. The chapter will firstly discuss extraterritorial protection of civilians in general, together with a discussion on extraterritorial application of human rights treaties, state responsibility and effective overall control over territory. The chapter will conclude by analysing the extraterritorial responsibility to protect civilians in a situation of armed conflict.

Extraterritorial state obligations are posed on states by international human rights treaties. International human rights treaties do, however, contain domestic state obligations.[517] In the commentaries to the Draft articles on the Law of Treaties the ILC explained how the subject-matter of a treaty is what demonstrates, if and how, rights and obligations apply territorially.[518] Human rights treaties apply to their state parties and therefore impose obligations to these.[519] Additionally, human rights treaties create obligations between the state parties and between states and individuals.[520] Consequently, extraterritorial application of a human rights treaty to an individual comprehends and requires firstly that the state owe legal obligations to the individual under that treaty, and secondly, that at the time when the alleged violation is committed, the individual is physically located outside the territory of the state party concerned.[521]

When determining the applicability of state obligations to a particular activity, the question of scope *ratione materiae* is addressed and whether the activity falls within this scope of the obligations concerned.[522] Duties of a state, or state obligations, are triggered when a state has

[517] Skogly and Gibney, "Introduction" in Gibney and Skogly (eds.), 2010, p. 4.
[518] Draft Articles on the Law of Treaties with Commentaries, Yearbook of the International Law Commission, 1966, Vol. II, p. 213.
[519] Milanovic, 2011, p. 7.
[520] Ibid., p. 7.
[521] Ibid., pp. 7-8.
[522] Wilde, "Triggering State Obligations Extraterritorially: The Spatial Test in certain Human Rights Treaties", *Israel Law Review*, 2007, Vol. 40, No. 2, pp. 503-526.

committed a breach of an international obligation, that is, an internationally wrongful act.[523] According to Nowak, "[u]nder contemporary human rights theory, all rights of human beings entail corresponding obligations of states to respect and ensure such rights".[524] The obligation to respect in this sense refers to the notion of states refraining from interference that is unjustified, the obligation to ensure then refers to positive obligations of states to protect and fulfil these rights.[525] The obligation to protect refers to states avoiding human rights violations and the obligation to fulfil refers to states taking all necessary positive legislative, judicial and administrative measures to fulfil their state obligations and to ensure these rights are implemented.[526]

The universal human rights of the UDHR have today become firmly established in legally binding conventions, namely in the human rights treaties of the UN.[527] Similarly, states have largely committed to humanitarian conventions, as the Geneva Conventions and the Hague Conventions. Practice may not follow these human rights and humanitarian commitments, however, these commitments have been made.[528] There are also regional instruments declaring respect of IHRL, like the ECHR,[529] not to mention domestic law, where human rights are often incorporated by Bills of Rights in constitutions. While "advocating universal enjoyment of human rights, it does not make sense to limit the protection of human rights to national borders" and therefore these need to be protected not only territorially but also extraterritorially.[530] The four Geneva Conventions share in their first Article the wording "in all circumstances",[531]

[523] Skogly and Gibney, "Introduction" in Gibney and Skogly (eds.), 2010, p. 4.
[524] Nowak, "Obligations of States to Prevent and Prohibit Torture in an Extraterritorial Perspective" in Gibney and Skogly (eds.), 2010, p. 11. See also Nowak, 2003.
[525] Nowak, "Obligations of States to Prevent and Prohibit Torture in an Extraterritorial Perspective" in Gibney and Skogly (eds.), 2010, p. 11.
[526] Ibid., pp. 11-12.
[527] Convention on the Prevention and Punishment of the Crime of Genocide, 1948; Convention relating to the Status of Refugees, 1951; International Convention on the Elimination of All Forms of Racial Discrimination, 1965; International Covenant on Civil and Political Rights, 1966; International Covenant on Economic, Social and Cultural Rights, 1966; Convention on the Elimination of All Forms of Discrimination against Women, 1979; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984; Convention on the Rights of the Child, 1989; Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990; Convention on the Rights of Persons with Disabilities, 2006; Convention for the Protection of All Persons from Enforced Disappearance, 2006.
[528] Milanovic, 2011, p. 231.
[529] See European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16, 1950.
[530] Skogly, "Extraterritoriality: universal human rights without universal obligations?" in Joseph and McBeth (eds.), 2011, p. 96.
[531] Article 1, GCI, GCII, GCIII, GCIV (Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Convention for the Amelioration of the Condition of Wounded, Sick and

meaning the articles of the four conventions are undertaken to be respected in any circumstances by the contracting parties. Consequently, it is a "cause-and-effect" kind of responsibility.[532] The kind of "cause-and-effect" responsibility included in the Geneva Conventions, hence, applies also in an extraterritorial setting, as it allows for broad and extensive jurisdiction.[533] By way of comparison, Article 1 of the Geneva Conventions is broader than what Article 1 of the ECHR or Article 2 of the ICCPR are, as there is no jurisdictional clause in the four Geneva Conventions.[534] Treaties comprehending IHL, have no jurisdictional clauses, as these treaties are to protect vulnerable people in situations of armed conflicts.[535]

Similar state obligations as in Article 1 of the ECHR[536] can be found in both the 1969 American Convention on Human Rights (ACHR)[537] and in the 1981 African Charter on Human and People's Rights (ACHPR).[538] In addition to the ECHR, the ACHR, the ACHPR and the ICCPR there are also other international human rights instruments, as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the CAT,[539] that through their case law share this view on application of extraterritorial jurisdiction in exceptional circumstances, that is, when a state is regarded as having effective control or authority over a territory[540] or actions

shipwrecked Members of Armed Forces at Sea, Convention relative to the Treatment of Prisoners of War, Convention relative to the Protection of Civilian Persons in Time of War), 1949.

[532] *Bankovic and Others v. Belgium and 16 Other Contracting States*, European Court of Human Rights (Application no. 52207/99), Grand Chamber Decision of 12 December 2001, paragraph 40.

[533]Ibid., paragraph 40.

[534] See Chapter 3.2.3. in this thesis regarding jurisdictional clauses of the ECHR and the ICCPR. Article 1, GCI, GCII, GCIII, GCIV (Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Convention for the Amelioration of the Condition of Wounded, Sick and shipwrecked Members of Armed Forces at Sea, Convention relative to the Treatment of Prisoners of War, Convention relative to the Protection of Civilian Persons in Time of War), 1949 and Article 1, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16, 1950.

[535] Milanovic, 2011, pp. 17-18.

[536] Article 1, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16, 1950.

[537] Article 1, American Convention on Human Rights,1969.

[538] Article 1, African Charter on Human and People's Rights, 1981.

[539] Article 1, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16, 1950; Article 1, American Convention on Human Rights, 1969; Article 1, African Charter on Human and People's Rights, 1981; Article 2, International Covenant on Civil and Political Rights, 1966; Article 2, International Covenant on Economic, Social and Cultural Rights, 1966; and Article 2, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.

[540] See *Loizidou v. Turkey*, European Court of Human Rights (Application No. 15318/89), Preliminary Objections, Judgment of 23 March 1995, paragraph 62; *Loizidou v. Turkey*, European Court of Human Rights (Application no. 15318/89), Merits, Judgement of 18 December 1996, paragraph 52; *Cyprus v. Turkey*, European Court of Human Rights (Application no. 25781/94), Grand Chamber Judgement of 10 May 2001, paragraphs 75-77; *Bankovic and Others v. Belgium and 16 Other Contracting States*, European Court of Human Rights (Application no. 52207/99), Grand Chamber Decision of 12 December 2001, paragraphs 70 and 75; *Legal Consequences of the*

of non-state actors.[541] Deprivation of life, by means of state power, in an area within the effective control of the state, equals to the fact that human rights treaties are applicable.[542] In a situation of armed conflict, when a state has occupied a territory with the use of force, then IHL treaties apply simultaneously with IHRL treaties.[543]

4.1.2. State Responsibility

The ILC has concluded rules for state responsibility in its report on Responsibility of States for Internationally Wrongful Acts.[544] The articles of the ILC report are non-binding, however, they are seen as forming part of CIL. When a breach of a state's international obligations can be attributed to a particular state, then international responsibility can be incurred on this state according to the ILC articles.[545] Article 2 demonstrates the situations that constitute state responsibility and subparagraph 2(b) comprehends the interpretation of state jurisdiction in the

Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion 9 July 2004), ICJ Reports 2004, p. 136, paragraphs 107-113; *Issa and Others v. Turkey*, European Court of Human Rights (Application no. 31821/96), Judgement of 16 November 2004, paragraphs 69-70; and UN Human Rights Committee General Comment No. 31: The Nature of the General Legal Obligations Imposed on States Parties to the Covenant (Art. 2), 26 May 2004, UN doc. CCPR/C/21/Rev.1/Add. 13, paragraph 10.

[541] *X. against the Federal Republic of Germany*, European Commission of Human Rights (Application No. 1611/62), Plenary, Decision of 25 September 1965, p. 168; *X. v. the United Kingdom*, European Commission of Human Rights (Application No. 7547/76), Plenary, Decision of 15 December 1977, pp. 73-75; *Delia Saldias de Lopez v. Uruguay* (*López Burgos v. Uruguay*), United Nations Human Rights Committee, (Communication No. 52/1979), CCPR/C/13/D/52/1979, Views Adopted 29 July 1981, paragraph 12.3 and Individual opinion appended to the Committee's views at the request of Mr. Christian Tomuschat: "Never was it envisaged, however, to grant States parties unfettered discretionary power to carry out wilful and deliberate attacks against the freedom and personal integrity of their citizens living abroad."; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgement of 27 June 1986, ICJ Reports 1986, p. 14; *M. v. Denmark*, European Commission of Human Rights (Application No. 17392/90), Decision of 14 October 1992; *The Prosecutor v. Duško Tadic*, International Criminal Tribunal for the Former Yugoslavia Appeals Chamber, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995; *Bankovic and Others v. Belgium and 16 Other Contracting States*, European Court of Human Rights (Application no. 52207/99), Grand Chamber Decision of 12 December 2001, paragraph 75; *Öcalan v. Turkey*, European Court of Human Rights (Application no. 46221/99), Judgement of 12 May 2005, paragraphs 13-60; UN Human Rights Committee General Comment No. 31: The Nature of the General Legal Obligations Imposed on States Parties to the Covenant (Art. 2), 26 May 2004, UN doc. CCPR/C/21/Rev.1/Add. 13, paragraph 10; Article 16-18, Report of the International Law Commission on the work of its fifty-third session (23 April–1 June and 2 July–10 August 2001), Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the International Law Commission at its fifty-third session, UN doc. A/56/10; Wilde, "Triggering State Obligations Extraterritorially: The Spatial Test in certain Human Rights Treaties", *Israel Law Review*, 2007, Vol. 40, No. 2, pp. 503-526; and Costa da, *The Extraterritorial Application of Selected Human Rights Treaties*, 2012, pp. 12-14, 93-110, and 255-273.

[542] Milanovic, 2011, p. 120.

[543] Ibid., p. 141.

[544] Report of the International Law Commission on the work of its fifty-third session (23 April–1 June and 2 July–10 August 2001), Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the International Law Commission at its fifty-third session, UN doc. A/56/10.

[545] Article 2, Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the International Law Commission, 2001, UN doc. A/56/10.

sense it is seen in human rights treaties.[546] The question this thesis aims to answer is, whether states have an obligation to extraterritorially protect human rights, as in protecting civilians extraterritorially, and how is it attributable to states to protect their nationals that suffer from human rights violations abroad. Jurisdiction and attribution are not tantamount to each other, even though both may give rise to state responsibility and both may be founded on the same circumstances.[547]

Article 4 of the ILC report defines when conduct is considered an act of the state.[548] Article 5 further explains the significance of Article 4, by elucidating that conduct of a person or entity, which exercises governmental authority can also be considered an act of that state.[549] Even though acts would not fulfil the criteria of Article 4, the acts could be considered acting under the effective control of that state. Article 8, still, indicates that acting under direction or control of a state, it is to be considered an act of the state and it can, hence, engage state responsibility.[550] An act of violation needs to be attributable to the state in order for state responsibility to be engaged for the state in question. Attribution can be tested through the concept of 'effective control'.

4.1.3. Effective Control

Effective control as a measure of power or influence, will be defined and discussed in this sub-chapter. Negative state obligations to respect human rights, have no territorial limitations, whereas positive state obligations to protect human rights is limited to situations of 'effective control'. Effective control is defined as the total control over an area of territory. Milanovic has defined effective control in the following way:

> 'Effective control' is also a homonym — there is the effective control test for the purposes of attribution, as developed by the ICJ in Nicaragua; there is 'effective control' as sometimes used in humanitarian law to describe the threshold of the beginning of a belligerent occupation of a territory; there is effective (overall) control of an area as a test developed by the European Court for the purpose of determining a state's jurisdiction over territory; there is also effective control as used in international criminal law to describe the relationship a superior has to have over a subordinate so his command responsibility can be engaged.[551]

[546] Ibid., Article 2. Milanovic, 2011, p. 51.
[547] Milanovic, 2011, pp. 52-53.
[548] Article 4, Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the International Law Commission, 2001, UN doc. A/56/10.
[549] Ibid., Article 5.
[550] Ibid., Article 8.
[551] Milanovic, 2011, pp. 52-53.

As demonstrated in Chapter 3 of this thesis regarding jurisdiction, jurisdiction is the factual exercise of control and authority by a state. The right to exercise control and authority over a specific territory, in international law, is established by sovereignty or title. A state may well have sovereignty over a territory but not jurisdiction, which means that the state is lacking *de facto* control over the specific territory.

Within the regional context of Europe, the ECtHR can hear complaints by individuals on violations of the ECHR. The ECtHR's mandate originates in the ECHR. Cases that have caused debate regarding the extraterritorial application of the ECHR are among others *Al-Skeini and Others v. The United Kingdom*, *Bankovic* and *Loizidou*. In the *Al-Skeini* case, the United Kingdom breached its obligations under the ECHR as the United Kingdom failed to conduct effective investigation into the deaths of six Iraqi civilians that were killed by soldiers from the United Kingdom. The ECtHR found that the United Kingdom possessed obligations under Article 1 of the ECHR that applied in Iraq, as the United Kingdom could be seen as having effective control over the territory. Therefore, the United Kingdom possessed jurisdiction over the territory, and consequently borne human rights obligations towards the individuals within that said jurisdiction.[552] According to Milanovic, the approach of the British court in the *Al-Skeini* case was "unsatisfactory", as there were no doubts that the killing of the six civilian Iraqis was attributable to the United Kingdom.[553] Milanovic further stated this approach could be interpreted as imposing jurisdiction threshold on negative state obligation cases, where the negative state obligation is to refrain from doing any harm.[554]

By way of conclusion, it can be established that under international law, states can have extraterritorial responsibilities. Application of effective control tests is, however, limited as jurisprudence has demonstrated that extraterritorial effective control over territory or individuals is possible in situations of state exercise of military or administrative control over territory.[555]

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[552] *Al-Skeini and Others v. United Kingdom*, European Court of Human Rights (Application no. 55721/07), Judgement of 7 July 2011.
[553] Milanovic, 2011, p. 51.
[554] Ibid., p. 51.
[555] See *Al-Skeini and Others v. United Kingdom*, European Court of Human Rights (Application no. 55721/07), Judgement of 7 July 2011, *Loizidou v. Turkey*, European Court of Human Rights (Application No. 15318/89),

4.2. Extraterritorial Responsibility to Protect Civilians under Foreign State Jurisdiction

As seen previously in this thesis, the concept of R2P in itself, can to some degree be interpreted as an extraterritorial norm. The main thought of the concept of R2P is to ensure protection of civilians from atrocities, both by the national state, but where a state itself is unwilling or uncapable of protecting its own civilians, by the international community, that is to step in and provide protection.[556] Similarly, POC is to a large extent an extraterritorial concept, as in most cases it would be most contradictory that the national state would both violate its civilian population, and simultaneously provide POC.

The ideal situation with regard to extraterritorial protection of human rights, is that all states would within their jurisdiction protect human rights and also respect human rights everywhere, as a consequence the rights of civilians would not be violated anywhere.[557] This, however, does not correspond to reality. All the same, where a state has *de* facto power over territory, it should avoid violating the rights of the individuals situated within the territory.[558] When a civilian person then is situated within the jurisdiction of a foreign state, who is to protect this civilian in the occurrence of an armed conflict? As seen in this thesis, the R2P is an international norm of protection that primarily lies in the hands of the national state, and secondly on the international community.[559] However, the concept of extraterritorial responsibility to protect civilians "challenges the traditional notions of jurisdiction, territory and state responsibility".[560] In international law, state jurisdiction is based on territory, sovereignty and control.[561] As seen in Chapter 3.2.2., jurisdiction can then be expressed through prescriptive, enforcement or judicial acts. The notion of territory is vital for sovereignty and jurisdiction, as territory is the

Preliminary Objections, Judgment of 23 March 1995, *Bankovic and Others v. Belgium and 16 Other Contracting States*, European Court of Human Rights (Application no. 52207/99), Grand Chamber Decision of 12 December 2001.

[556] See Report of the International Commission of Intervention and State Sovereignty, *The Responsibility to Protect*, 2001 and Report of the Secretary-General, *Implementing the Responsibility to Protect*, 12 January 2009, UN doc. A/63/677.

[557] Roxstrom, Gibney and Einarsen, "The NATO Bombing Case (*Bankovic et al. v. Belgium et al.*) and the Limits of Western Human Rights Protection", *Boston University International Law Journal* 2005, Vol. 23, No. 1, p. 73.

[558] Kamchibekova, "State Responsibility for Extraterritorial Human Rights Violations", *Buffalo Human Rights Law Review* 2007, Vol. 13, pp. 98-99.

[559] Report of the International Commission of Intervention and State Sovereignty, *The Responsibility to Protect*, 2001 and Report of the Secretary-General, *Implementing the Responsibility to Protect*, 12 January 2009, UN doc. A/63/677.

[560] Kamchibekova, "State Responsibility for Extraterritorial Human Rights Violations", *Buffalo Human Rights Law Review* 2007, Vol. 13, pp. 87-88.

[561] See Chapter 3 in this thesis.

physical entity where the exercise of jurisdiction takes place. International human rights treaties, like the ECHR, the ICCPR and the CAT, can be applied also in situations of extraterritorial conduct.[562] During an armed conflict, "human rights law continuously applies", whereas some human rights need to "be interpreted in the light of the *lex specialis*" of IHL.[563]

The state bears the primary responsibility to protect civilians within its territory and jurisdiction. This primary responsibility to protect civilians extends to all persons present in the territory; nationals, foreigners, visitors and so forth. In the occurrence of an armed conflict, this primary responsibility to protect of the state continuously exists. Effective control equals to extraterritorial application of jurisdiction,[564] additionally, nationality and effect can equal to extraterritorial application of jurisdiction.[565]

[562] Article 1, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16, 1950, Article 2(1), International Covenant on Civil and Political Rights, 1966, Articles 2, 5, 11, 12, 13 and 16, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.
[563] Kamchibekova, "State Responsibility for Extraterritorial Human Rights Violations", *Buffalo Human Rights Law Review* 2007, Vol. 13, p. 107 and UN Human Rights Committee General Comment No. 31: The Nature of the General Legal Obligations Imposed on States Parties to the Covenant (Art. 2), 26 May 2004, UN doc. CCPR/C/21/Rev.1/Add. 13, paragraph 11: "As implied in General Comment 291, the Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be specially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive."
[564] Milanovic, 2011, pp. 52-53.
[565] See Crawford, 2012, p. 458 and Ryngaert, 2015.

5. Conclusion

This chapter concludes the findings of the research of this thesis regarding extraterritorial responsibility to protect civilians in a situation of armed conflict. The research of this thesis has aimed at providing answers to the research questions posed in the introductory chapter and has been carried out in the following manner.

Firstly, R2P and POC has been discussed and analysed, providing for the detailed background and conceptual frameworks of these two norms of protection. R2P demonstrably has developed rapidly, from a conscientious concept to a universal political commitment to protect civilian populations from genocide, war crimes, ethnic cleansing and crimes against humanity. As demonstrated in Chapter 2, R2P is supported by the principle of international responsibility to protect. The primary R2P, however, lies at the national state, but where a state fails to provide protection from atrocities for its civilian population, then the international community has obligations to provide protection for these civilians violated by national state activity or foreign state activity. Pillar one R2P is anchored in IHRL and IHL as a legal norm, whereas the legal status of pillar two and three R2P is less evident, notwithstanding the fact that states are no longer allowed to stand by as passive observers when facing mass atrocity crimes. POC originates from IHL, although it to an increasing amount comprises much more than application of IHL. POC has become a policy commitment of the UNSC as well as of peacekeeping mandates and of humanitarian organisations. The two doctrines have become increasingly closer to each other since the beginning of the 21st century, as a consequence of support of R2P and the role of POC in peacekeeping mandates.[566] R2P and POC share the same values of providing protection to civilians in the face of mass atrocity crimes and both principles share normative, operational and institutional standpoints, the two principles are not, however, synonyms.[567] As demonstrated in this thesis, R2P and POC share similarities when regarding origin, evolution, scope of applicability, structure, legal basis and actors. These both norms of protection also initiate negative and positive state obligations. Both R2P and POC, are mandated to use of military force as a last resort, with the pronunciation focused on 'as a last resort', as R2P and POC in a pacific manner have the capacity to ensure protection from

[566] Smith, Whalan and Thomson, "The Protection of Civilians in UN Peacekeeping Operations: Recent Developments", *Security Challenges* 2011, Vol. 7, No. 4.
[567] Breakey and Francis, "Points of Convergence and Divergence: Normative, Institutional and Operational Relationships between R2P and PoC", *Security Challenges* 2011, Vol. 7, No. 4.

humanitarian crises. Distinctive elements of R2P and POC are their applicability. R2P is applicable to genocide, war crimes, ethnic cleansing and crimes against humanity, whereas POC applies to any violation committed in a situation of armed conflict and even to post-conflict situations. R2P is, thus, applicable irrespective of acts having been committed during an armed conflict or in times of peace. The two principles overlap and support each other, in providing protection to vulnerable populations. Both R2P and POC are primarily national within the jurisdiction of the territorial state. However, R2P and POC are simultaneously international responsibilities.

Secondly, the jurisdictional foundation for extraterritorial R2P civilians has been demonstrated. There are multiple bases for jurisdiction, the principle of territory still being the principle the most often relied upon. The extraterritorial responsibility to protect civilians is founded on the humanitarian principle to protect the most vulnerable and on jurisdiction as responsibility, as states bear an obligation to ensure protection of human rights within their jurisdiction. Contrary to the principle of non-intervention, extraterritorial R2P and POC rely upon the universal commitment to protect and on the view that sovereignty equals to responsibility. The principle of non-intervention can be a prohibitive incentive on the R2P.

Thirdly, through international human rights treaties, states have a constant obligation to protect. This obligation to protect includes extraterritorial protection, as states have an obligation to respect and secure human rights at all times, which has been interpreted to comply also to situations of extraterritoriality. Consequently, when a state is in a position of effective control over an area, that state has human rights obligations towards the civilian population in that specific area, be it nationals or non-nationals.

Finally, this thesis takes the view that through IHL, IHRL and international treaties regarding protection of civilians in a situation of extraterritoriality, extraterritorial protection of civilians could be respected and afforded within the international community. Through the adoption of instruments of human rights and through the efficient translation from treaties into practice, extraterritorial rights of civilians could effectively be upheld and guaranteed to civilian populations during a situation of armed conflict. Generally, this thesis has aimed at uncovering the role of the state and the international community in the discussion regarding R2P and

protection of the civilian population by POC rights also for civilians that are under the jurisdiction of a foreign state.

BIBLIOGRAPHY

MONOGRAPHS, CHAPTERS IN MONOGRAPHS AND ARTICLES

Ascensio Hervé, Contribution to the work of the UN Secretary-General's Special Representative on human rights and transnational corporations and other businesses, *Extraterritoriality as an instrument*, 2010.

Bailliet M. Cecilia, "Introduction" in Bailliet M. Cecilia (ed.), *Security – A Multidisciplinary Normative Approach*, Leiden: Martinus Nijhoff Publishers, 2009.

Berman Schiff Paul, "The Globalization of Jurisdiction", *University of Pennsylvania Law Review* 2002, Vol. 151, No. 2, pp. 311- 546.

Breakey Hugh, "The responsibility to protect: Game change and regime change", pp. 11- in Francis Angus, Popovski Vesselin and Sampford Charles (eds.), *Norms of Protection: Responsibility to Protect, Protection of Civilians and Their Interaction*, United Nations University Press, 2012.

Breakey Hugh and Francis Angus, "Points of Convergence and Divergence: Normative, Institutional and Operational Relationships between R2P and PoC", *Security Challenges* 2011, Vol. 7, No. 4, pp. 39-50.

Buxbaum L. Hannah, "Territory, Territoriality and the Resolution of Jurisdictional Conflict", *American Journal of Comparative Law* 2009, Vol. 57, No. 3, pp. 631-675.

Cassese Antonio (1), "The Geneva Protocols of 1977 on the Humanitarian Law of Armed Conflict and Customary International Law", UCLA *Pacific Basin Law Journal* 1984, Vol. 3, No. 1-2, pp. 57-118.

Cassese Antonio (2), *International Criminal Law*, Oxford; New York: Oxford University Press, 2008.

Chapman R. Audrey and Carbonetti Benjamin, "Human Rights Protection for Vulnerable and Disadvantaged Groups: The Contributions of the UN Committee on Economic, Social and Cultural Rights", *Human Rights Quarterly* 2011, Vol. 33, No. 3, pp. 682-732.

Colangelo J. Anthony, "What Is Extraterritorial Jurisdiction", *Cornell Law Review* 2014, Vol. 99, No. 6, pp. 1303-1352.

Connor Jeremy, "Jurisdiction in Cases of Criminal Conspiracy", *Journal of Criminal Law* 1976, Vol. XL, No. 160, pp. 281-286.

Cooreman Barbara, *Global Environmental Protection trough Trade, A Systematic Approach to Extraterritoriality*, Cheltenham: Edward Elgar Publishing Limited, 2017.

Costa da Karen, *The Extraterritorial Application of Selected Human Rights Treaties*, Leiden, Boston: Martinus Nijhoff Publishers, 2012.

Crawford James, *Brownlie's Principles of Public International Law*, 8th Edition, Oxford: Oxford University Press, 2012.

Dahl W. Arne, "Foreword" in Bailliet M. Cecilia (ed.), *Security – A Multidisciplinary Normative Approach*, Leiden: Martinus Nijhoff Publishers, 2009.

Deng M. Francis (ed.) *Sovereignty as Responsibility: Conflict Management in Africa*, Washington DC: Brookings Institution Press, 1996.

Durham Helen and Wynn-Pope Phoebe, "The relationship between international humanitarian law and responsibility to protect: From Solferino to Srebrenica" in Francis Angus, Popovski Vesselin and Sampford Charles (eds.), *Norms of Protection: Responsibility to Protect, Protection of Civilians and Their Interaction*, United Nations University Press, 2012.

Evans Gareth, "From Humanitarian Intervention to the Responsibility to Protect", *Wisconsin International Law Journal* 2006, Vol. 24, No. 3, pp. 703-722.

Ferris Elizabeth, *The Politics of Protection*, Washington DC: Brookings Institution Press, 2011.

Ferris Elizabeth and Kirisci Kemal, *The Consequences of Chaos – Syria's Humanitarian Crisis and the Failure to Protect*, Washington DC: Brookings Institution Press, 2016.

Francis Angus and Sampford Charles "Introduction" in Francis Angus, Popovski Vesselin and Sampford Charles (eds.), *Norms of Protection: Responsibility to Protect, Protection of Civilians and Their Interaction*, United Nations University Press, 2012.

Glover Jonathan, *Humanity: A Moral History of the Twentieth Century*, New Haven: Yale University Press, 1996.

Henckaerts Jean-Marie, "Assessing the Laws and Customs of War: The Publication of Customary International Humanitarian Law", *Human Rights Brief* 2006, Vol. 13, No. 2, pp. 8-12.

Henckaerts Jean-Marie, and Doswald-Beck Louise (eds.) *Customary International Humanitarian Law*, Volume I, Rules. Cambridge: Cambridge University Press, 2005.

Higgins Rosalyn, *Problems and Process: International Law and How We Use It*, Oxford: Clarendon Press, 1994.

Hudson O. Manley, *World Court Reports, A Collection of the Judgements, Orders and Opinions of the Permanent Court of Justice*, Volume II, 1927-1932, Concord: The Rumford Press, 1935.

Jackson H. John, "Sovereignty-Modern: A New Approach To An Outdated Concept", *American Journal of International Law* 2003, Vol. 97, No. 4, pp. 782-802.

Kamchibekova Damira, "State Responsibility for Extraterritorial Human Rights Violations", *Buffalo Human Rights Law Review* 2007, Vol. 13, pp. 87-149.

Kolb Robert and Hyde Richard, *An Introduction to the International Law of Armed Conflicts*, Oxford: Hart Publishing, 2008.

McCarthy G. John, "The Passive Personality Principle and Its Use in Combatting International Terrorism", *Fordham International Law Journal* 1989, Vol. 13, No. 3, pp. 298-327.

McGregor Lorna, "Torture and State Immunity: Deflecting Impunity, Distorting Sovereignty", *The European Journal of International Law* 2008, Vol. 18, No. 5, pp. 903-919.

Milanovic Marko, *Extraterritorial Application of Human Rights Treaties – Law, Principles and Policy*, Oxford: Oxford University Press, 2011.

Murphy Ray, "Peacekeeping in Lebanon and Civilian Protection", *Journal of Conflict and Security Law* 2012, Vol. 17, No. 3, pp. 373-402.

Nishimura Hayashi Mika, "The Principle of Civilian Protection and Contemporary Warfare" in Hensel M. Howard (ed.), *The Law of Armed Conflict – Constraints on the Contemporary Use of Military Force*, Hampshire: Ashgate Publishing Limited 2005.

Nowak Manfred (1), *Introduction to the International Human Rights Regime*, The Hague: Martinus Nijhoff, 2003.

Nowak Manfred (2), "Obligations of States to Prevent and Prohibit Torture in an Extraterritorial Perspective" in Gibney Mark and Skogly Sigrun (eds.), *Universal Human Rights and Extraterritorial Obligations*, Philadelphia: University of Pennsylvania Press, 2010.

O'Keefe Roger, "Universal Jurisdiction – Clarifying the Basic Concept", *Journal of International Criminal Justice* 2004, Vol. 2, No. 3, pp. 735-760.

Orchard Phil, "The Perils of Humanitarianism: Refugee and IDP Protection in Situations of Regime-Induced Displacement", *Refugee Survey Quarterly* 2010, Vol. 29, No. 1, pp. 38-60.

Popovski Vesselin, "The Concepts of Responsibility to Protect and Protection of Civilians: 'Sisters, but not Twins'", *Security Challenges* 2011, Vol. 7, No. 4, pp. 1-12.

Roxstrom Erik, Gibney Mark and Einarsen Terje, "The NATO Bombing Case (*Bankovic et al. v. Belgium et al.*) and the Limits of Western Human Rights Protection", *Boston University International Law Journal* 2005, Vol. 23, No. 1, pp. 55-136.

Ryngaert Cedric (1), "Universal Jurisdiction in an ICC Era: A Role to Play for EU Member States with the Support of the European Union", *European Journal of Crime, Criminal Law and Criminal Justice* 2006, Vol. 14, No. 1, pp. 46-80.

Ryngaert Cedric (2), *Jurisdiction in International Law*, 2nd Edition, Oxford: Oxford University Press, 2015.

Sampford Charles, "A Feuerbachian Inversion: From Sovereign Rights and Subjects Duties to Citizen Rights and State Duties", *Security Challenges* 2011, Vol. 7, No. 4, pp. 51-60.

Sassòli Marco, "The Concept of Security in International Law Relating to Armed Conflicts" in Bailliet M. Cecilia (ed.), *Security – A Multidisciplinary Normative Approach*, Leiden: Martinus Nijhoff Publishers, 2009.

Schabas A. William, "National Courts Finally Begin to Prosecute Genocide, the 'Crime of Crimes'", *Journal of International Criminal Justice* 2003, Vol. 1, No. 1, pp. 39-63.

Skogly Sigrun, "Extraterritoriality: universal human rights without universal obligations?" in Joseph Sarah and McBeth Adam (eds.), *Research Handbook on International Human Rights Law*, Cheltenham: Edward Elgar Publishing Limited 2011.

Skogly Sigrun and Gibney Mark, "Introduction" in Gibney Mark and Skogly Sigrun (eds.), *Universal Human Rights and Extraterritorial Obligations*, Philadelphia: University of Pennsylvania Press, 2010.

Smith G. Michael, Whalan Jeni and Thomson Peter, "The Protection of Civilians in UN Peacekeeping Operations: Recent Developments", *Security Challenges* 2011, Vol. 7, No. 4, pp. 27-38.

Stockburger Peter, "The Responsibility to Protect Doctrine: Customary International Law, an Emerging Legal Norm or Just Wishful Thinking?", *Intercultural Human Rights Law Review* 2010, Vol. 5, pp. 365-405.

Thakur Ramesh, "Libya and the Responsibility to Protect: Between Opportunistic Humanitarianism and Value-Free Pragmatism", *Security Challenges* 2011, Vol. 7, No. 4, pp. 13-25.

Valentino Benjamin, Huth Paul and Croco Sarah, "Covenants without the Sword: International Law and the Protection of Civilians in Times of War", *World Politics*, 2006, Vol. 58, No. 3, pp. 339-377.

Vattel De Emmerich, *Le Droit des Gens ou Principes de la Loi Naturelle*, 1758. Reproduction of Books I & II of Edition of 1758, Washington: Carnegie Institution of Washington, 1916.

Vattel De Emmerich, *Law of Nations; or Principles of the of Nature, applied to the Conduct and Affairs of Nations and Sovereigns*, 1758. Translated version, new edition by Chitty Joseph, Philadelphia: T. & J. W. Johnson & Co. Law Booksellers, 1872.

Voigt Christina, [Security in a "Warming World": Competences of the UN Security Council for Preventing Dangerous Climate Change] in Bailliet M. Cecilia (ed.), *Security – A Multidisciplinary Normative Approach*, Leiden: Martinus Nijhoff Publishers, 2009.

Wilde Ralph, "Triggering State ObligationsExtraterritorially: The Spatial Test in certain Human Rights Treaties", *Israel Law Review*, 2007, Vol. 40, No. 2, pp. 503-526.

Zalucki Krzysztof, "Extraterritorial Jurisdiction in International Law", *International Community Law Review*, 2015, Vol. 17, No. 4-5, pp. 403-412.

TREATIES, CONVENTIONS AND STATUTES

2006 Convention on the Rights of Persons with Disabilities, 13 December 2006, entry into force 3 May 2008, UNTS, I-44910.

2006 Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006, entry into force 23 December 2010, UNTS, I-48088.

1998 Rome Statute of the International Criminal Court, concluded 17 July 1998, entry into force 1 July 2002, 37 ILM 999.

1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 18 December 1990, UNTS, I-39481.

1989 Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, UNTS, I-27531.

1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted by the General Assembly of the United Nations on 10 December 1984, UNTS, I-24841.

1981 African Charter on Human and People's Rights, adopted 27 June 1981, entered into force 21 October 1986, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58.

1979 International Convention against the Taking of Hostages. Adopted by the General Assembly of the United Nations on17 December 1979, UNTS, I-21931.

1979 Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, UNTS, I-20378.

1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, (Protocol I). 8 June 1977, entry into force 7 December 1978, UNTS, I-17512.

1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, (Protocol II). 8 June 1977, entry into force 7 December 1978, UNTS, I-17513.

1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents (with the resolution 3166 (XXVIII) of the General Assembly of the United Nations). Adopted by the

General Assembly by the United Nations, at New York, on 14 December 1973, UNTS, I-15410.

1973 International Convention on the Suppression and Punishment of the Crime of Apartheid. Adopted by the General Assembly of the United Nations on 30 November 1973, UNTS, I-14861.

1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. Concluded at Montréal on 23 September 1971, UNTS, I-14118.

1970 Convention for the Suppression of Unlawful Seizure of Aircraft. Signed at The Hague on 16 December 1970, UNTS, I-12325.

1969 American Convention on Human Rights, concluded 22 November 1969, entered into force 18 July 1978, OAS Treaty Series No. 36.

1966 International Covenant on Civil and Political Rights, 19 December 1966, UNTS, I-14668.

1966 International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, UNTS, I-14531.

1965 International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, opened for signature on 7 March 1966, UNTS, I-9464.

1951 Convention relating to the Status of Refugees, 28 July 1951, UNTS, I-2545.

1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16. Rome 4 November 1950, UNTS Vol. 213, No. 2889.

1949 Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949, entry into force 21 October 1950, UNTS, I-970.

1949 Convention (II) for the Amelioration of the Condition of Wounded, Sick and shipwrecked Members of Armed Forces at Sea, Geneva, 12 August 1949, entry into force 21 October 1950, UNTS, I-971.

1949 Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, entry into force 21 October 1950, UNTS, I-972.

1949 Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, entry into force 21 October 1950, UNTS, I-973.

1948 Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, UNTS, I-1021.

1945 Charter of the United Nations and Statute of the International Court of Justice, signed in San Francisco 26 June 1945, entry into force 24 October 1945.

1907 Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907, entry into force 26 January 1910.

1899 Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 29 July 1899, entry into force 4 September 1900.

1864 Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, Geneva, 22 August 1864, entry into force 22 June 1865.

DECLARATIONS, RESOLUTIONS AND RECOMMENDATIONS

2014 Resolution 2148, adopted by the Security Council, 3 April 2014, UN doc. S/RES/2148.

2011 Resolution 1973, adopted by the Security Council, 17 March 2011, UN doc. S/RES/1973.

2011 Resolution 1970, adopted by the Security Council, 26 February 2011, UN doc. S/RES/1970.

2009 Resolution 1861, adopted by the Security Council, 14 January 2009, UN doc. S/RES/1861.

2008 Resolution 1834, adopted by the Security Council, 24 September 2008, UN doc. S/RES/1834.

2007 Resolution 1778, adopted by the Security Council, 25 September 2007, UN doc. S/RES/1778.

2006 Resolution 1738, adopted by the Security Council, 23 December 2006, UN doc. S/RES/1738.

2006 Resolution 1674, adopted by the Security Council, 28 April 2006, UN doc. S/RES/1674.

2005 World Summit Outcome Document, adopted by the General Assembly, 24 October 2005, UN doc. A/RES/60/1.

2005 Resolution 1590, adopted by the Security Council, 24 March 2005, UN doc. S/RES/1590.

2004 Resolution 1542, adopted by the Security Council, 30 April 2004, UN doc. S/RES/1542.

2004 Resolution 1528, adopted by the Security Council, 27 February 2004, UN doc. S/RES/1528.

2003 Resolution 1509, adopted by the Security Council, 19 September 2003, UN doc. S/RES/1509.

2002 Resolution 1401, adopted by the Security Council, 28 March 2002, UN doc. S/RES/1401.

2000 Resolution 1296, adopted by the Security Council, 19 April 2000, UN doc. S/RES/1296.

1999 Resolution 1279, adopted by the Security Council, 30 November 1999, UN doc. S/RES/1279.

1999 Resolution 1265, adopted by the Security Council, 17 September 1999, UN doc. S/RES/1265.

1983 Resolution 38/188 H, adopted by the General Assembly, 20 December 1983, UN doc. A/RES/38/188 H.

1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, UNGA Resolution 2625 (XXV), 24 October 1970, UN doc. A/RES/2625 (A/8082).

1948 Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly in Paris, 10 December 1948, UN doc. A/RES/217A.

1868 Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight, Saint Petersburg, 11 December 1868.

DOMESTIC LAW

Belgium

Criminal Code of the Kingdom of Belgium (1867, as of 2018), Code Pénal

France

Criminal Code of the French Republic, (as of January 2020), Code Pénal

INTERNATIONAL CASE LAW

2011 *Al-Skeini and Others v. United Kingdom*, European Court of Human Rights, Judgement of 7 July 2011, Application no. 55721/07, Reports of Judgements and Decisions 2011.

2005 *Armed Activities on the Territory of the Congo* (Democratic Republic of the Congo v. Uganda), Judgement of 19 December 2005, ICJ Reports 2005, p. 168.

2005 *Öcalan v. Turkey*, European Court of Human Rights, Judgement of 12 May 2005, Application no. 46221/99, Reports of Judgments and Decisions 2005-IV.

2004 *Issa and Others v. Turkey*, European Court of Human Rights, Judgement of 16 November 2004, Application no. 31821/96, Reports of Judgments and Decisions 2004-.

2004 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, (Advisory Opinion 9 July 2004), ICJ Reports 2004, p. 136.

2004 *Ilascu and Others v. Moldova and Russia*, European Court of Human Rights Grand Chamber Decision of 8 July 2004, Application no. 48787/99, Reports of Judgments and Decisions 2004-VII.

2002 *Arrest Warrant* (Democratic Republic of the Congo v. Belgium), Judgment of 11 April 2000, ICJ Reports 2002, p. 3.

2001 *Bankovic and Others v. Belgium and 16 Other Contracting States*, European Court of Human Rights, Grand Chamber Decision of 12 December 2001, Application no. 52207/99, Reports of Judgments and Decisions 2001-XII.

2001 *Cyprus v. Turkey*, European Court of Human Rights, Grand Chamber Judgement of 10 May 2001, Application no. 25781/94, Reports of Judgments and Decisions 2001-IV.

2000 *Prosecutor v. Tihomir Blaškic*, ICTY, Judgement of 3 March 2000, Case No. IT-95-14-T.

1996 *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion 8 July 1 1996), ICJ Reports 1996, p. 226.

1996 *Loizidou v. Turkey*, European Court of Human Rights, Application no. 15318/89, Merits, Judgement of 18 December 1996, Reports of Judgements and Decisions 1996-VI.

1995 *The Prosecutor v. Duško Tadic*, ICTY Appeals Chamber, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, Case No. IT-94-1-AR 72.

1995 *Loizidou v. Turkey*, European Court of Human Rights, Application No. 15318/89, Preliminary Objections, Judgment of 23 March 1995, Series A No. 310.

1992 *M. v. Denmark*, European Commission of Human Rights, Application No. 17392/90, Decision of 14 October 1992, D.R. No. 73, p. 193.

1986 *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgement of 27 June 1986, ICJ Reports 1986, p. 14.

1981 *Delia Saldias de Lopez v. Uruguay* (*López Burgos v. Uruguay*), United Nations Human Rights Committee, Communication No. 52/1979, CCPR/C/13/D/52/1979, Views Adopted 29 July 1981.

1977 *X. v. the United Kingdom*, European Commission of Human Rights, Plenary, Application No. 7547/76, Decision of 15 December 1977, D.R. 12, p. 73.

1971 *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, p. 16.

1969 *North Sea Continental Shelf*, Judgement of 20 February 1969, ICJ Reports 1969, p. 3.

1965 *X. against the Federal Republic of Germany*, European Commission of Human Rights, Plenary, Application No. 1611/62, Decision of 25 September 1965.

1928 *Island of Palmas case*, (Netherlands, USA), United Nations Reports of International Arbitral Awards, 4 April 1928, Vol II, pp. 829-871.

1927 *S.S. "Lotus"*, Collection of Judgements, Permanent Court of International Justice, 7 September 1927, Series A. No. 10.

NATIONAL CASE LAW

2013 *Esther Kiobel, individually and on behalf of her late husband, Dr. Barinem Kiobel v. Royal Dutch Petroleum Co.*, 17 April 2013, 133 S.Ct. 1659, No. 10-1491. (Supreme Court of United States)

2011 *J.McIntyre Machinery, Ltd. v. Robert Nicastro*, 27 June 2011, 131 S.Ct. 2780, No. 09-1343. (Supreme Court of the United States)

2011 *Goodyear Dunlop Tires Operations, S.A. v. Edgar D. Brown*, 27 June 2011, 131 S.Ct. 2846, No. 10-76. (Supreme Court of the United States)

2010 *Robert Morrison v. National Australia Bank Ltd.*, 24 June 2010, 130 S.Ct. 2869, No. 08-1191. (Supreme Court of the United States)

2008 *Lakhdar Boumediene v. George W. Bush*, 12 June 2008, 553 U.S. 723. (Supreme Court of the United States)

1990 *United States of America v. Fawaz Yunis*, 12 February 1988, 681 F. Supp. 896 (DDC 1988), Case no. 89-3208. (District Court, District of Columbia)

1957 *Board of Trade v. Owen*, 29 January 1957, AC 602.

1948 *Naim Molwan v. Attorney General for Palestine*, 20 April 1948, 81 LI L Rep 277.

1945 *United States v. Aluminium Company of America*, 148 F.2d 416 (2nd Cir, 1945), 12 March 1945.

1888 *Cutting*, U.S. Department of State, 1887 Foreign Relations 751 (1888), 2 Moore, International Law Digest 1906.

DOCUMENTS PRODUCED BY THE UNITED NATIONS

Education For All Global Monitoring Report*, The Hidden Crisis: Armed Conflict and Education*, Summary, UNESCO Publishing, 2011, UN doc. ED.2011/WS/1.

Report of the detailed findings of the Independent International Fact-finding mission on Myanmar, 12 September 2018, UN doc. A/HRC/39/64.

Report of the International Law Commission to the General Assembly, Text adopted by the International Law Commission at its eighteenth session, in 1966, and submitted to the General Assembly, appears in *Yearbook of the International Law Commission*, 1966, Vol. II, pp. 187-274.

Report of the International Law Commission on the work of its fifty-third session (23 April–1 June and 2 July–10 August 2001), Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the International Law Commission at its fifty-third session, UN doc. A/56/10.

Statement by the President of the UNSC, S/PRST/2009/9, 29 April 2009.

Statement by the President of the UNSC, S/PRST/2009/1, 14 January 2009.

Statement by the President of the UNSC, S/PRST/2005/25, 21 June 2005.

Statement by the President of the UNSC, S/PRST/2004/46, 14 December 2004.

Statement by the President of the UNSC, S/PRST/2003/27, 15 December 2003.

Statement by the President of the UNSC, S/PRST/2002/41, 20 December 2002.

Statement by the President of the UNSC, S/PRST/2002/6, 15 March 2002.

Statement by the President of the UNSC, S/PRST/1999/6, 12 February 1999.

UN Human Rights Committee, General Comment No. 31, Article 2 of the Covenant: The Nature of the General Legal Obligations Imposed on States Parties to the Covenant, 26 May 2004, UN doc. CCPR/C/21/Rev.1/Add. 13.

UN Secretary-General Report S/2010/579, 11 November 2010.

UN Secretary-General Report S/2009/277, 29 May 2009.

UN Secretary-General Report, *Implementing the Responsibility to Protect*, UN doc. A/63/677, 12 January 2009.

UN Secretary-General Report S/2007/643, 28 October 2007.

UN Secretary-General Report S/2005/740, 28 November 2005.

UN Secretary-General Report S/2004/431, 28 May 2004.

UN Secretary-General Report S/2002/1300, 26 November 2002.

UN Secretary-General Report S/2001/331, 30 March 2001.

UN Secretary-General Report, '*We the Peoples' - the Role of the United Nations in the 21st Century* , Press Release No. UNIS/SG/2529, 30 March 2000.

UN Secretary-General Report S/1999/957, 8 September 1999.

UN Secretary-General Report A/40/553, 26 August 1985.

DOCUMENTS PRODUCED BY OTHER INTERNATIONAL ORGANISATIONS AND NON-GOVERNMENTAL ORGANISATIONS

Advisory Service on International Humanitarian Law, International Committee of the Red Cross and the Red Crescent, 2004.

Asia-Pacific Centre for the Responsibility to Protect, *Cyclone Nargis and the Responsibility to Protect – Myanmar/Burma Briefing No. 2*, 16 May 2008.

Council of Europe/European Court of Human Rights, *Guide on Article 2 of the Convention – Right to Life*, lastly updated 31 December 2019.

Global Coalition to Protect Education from Attack (GCPEA), *Education Under Attack 2018*, Research Director: Amy Kapit, New York, 2018.

International Bar Association – Legal Practice Division, *Report of the Task Force on Extraterritorial Jurisdiction*, 14 April 2009.

International Committee of the Red Cross and the Red Crescent, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, Geneva, 31IC/11/5.1.2, 2011.

Report of the International Commission of Intervention and State Sovereignty, *The Responsibility to Protect*, Ottawa: International Development Research Center, December 2001.

Rules concerning the Control of Wireless Telegraphy in Time of War and Air Warfare, drafted by a Commission of Jurists at The Hague, December 1922 - February 1923.

OTHER DOCUMENTS

Global Development Statistics at Gapminder, available at www.gapminder.org (last visited 22 February 2019).

Hardcastle Katherine, "UK: The Long Arm of the Law: Extra-Territoriality and the Serious Crime Act 2007", *Mondaq*, 3 October 2012, available at http://www.mondaq.com/uk/x/199404/Crime/The+Long+Arm+Of+The+Law+ExtraTerritoriality+And+The+Serious+Crime+Act+2007 (last visited 18 April 2019).

Icelandic Human Rights Centre, "The Human Rights Protection of Vulnerable Groups", 2009, available at http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/the-human-rights-protection-of-vulnerable-groups (last visited 16 January 2020).

The Oxford English Dictionary, available at http://dictionary.oed.com/ (last visited 18 April 2019).

The Doha Declaration: Promoting a Culture of Lawfulness, "Positive and negative obligations of the State", 2019, available at: https://www.unodc.org/e4j/en/tip-and-som/module-2/key-issues/positive-and-negative-obligations-of-the-state.html (last visited 2 March 2020).

Schneider Mark, "Implementing the Responsibility to Protect in Kenya and Beyond", International Crisis Group, Portland State University, 5 March 2010, available at: https://www.crisisgroup.org/africa/horn-africa/kenya/implementing-responsibility-protect-kenya-and-beyond (last visited 5 March 2020).

United Nations Office of the High Commissioner for Human Rights, "Rape: Weapon of War", News and Events, available at: https://www.ohchr.org/en/newsevents/pages/rapeweaponwar.aspx (last visited 25 March 2020).